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**THE DEMOCRACY OF THE  
CONSTITUTION**

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# THE DEMOCRACY OF THE CONSTITUTION

AND OTHER ADDRESSES AND ESSAYS

BY  
HENRY CABOT LODGE

NEW YORK  
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1915

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TO

THE LITERARY AND HISTORICAL ASSOCIATION  
OF NORTH CAROLINA

IN MEMORY OF

THE OPPORTUNITY GIVEN TO ME TO SPEAK TO THEM OF THE  
CONSTITUTION OF THE UNITED STATES

AND OF

THE KINDNESS AND HOSPITALITY SHOWN  
TO ME AT RALEIGH



## PREFACE

THE first five papers in this volume deal with the Constitution of the United States, with the "democracy" which it created and limited, and with the changes in it which are now proposed, affecting the courts and the principles of representative government. I have endeavored to omit, so far as possible, any repetitions, but as all the addresses are concerned with different phases of the same subject there are certain points where the same argument must recur in order to make clear the particular aspect of the question to which the main discussion is devoted.

I desire to express to Messrs. Funk & Wagnalls, to the publishers of the Century, and to the publishers of the Outlook my thanks for their kind permission to reprint three of the essays here republished.

HENRY CABOT LODGE.



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## THE PUBLIC OPINION BILL<sup>1</sup>

MR. PRESIDENT AND GENTLEMEN:

I am much indebted to you for your kindness in asking me to address you upon a public question which seems to me to be of the gravest importance. You are the representatives of the great labor organizations of Boston, but let me say at the outset that the measure which I am about to discuss is in no sense what is usually called a labor measure any more than it is a party measure. It is one which affects the entire community, every man and woman alike, without regard to their occupation or position, for it involves a change

<sup>1</sup> Address before the Central Labor Union of Boston, September 15, 1907. The Public Opinion Bill which had been proposed was as follows:

PUBLIC OPINION BILL AS REPORTED TO THE HOUSE OF REPRESENTATIVES OF MASSACHUSETTS AT THE LAST SESSION OF THE LEGISLATURE.  
AN ACT TO AUTHORIZE THE SUBMISSION TO VOTERS, ON OFFICIAL BALLOTS AT STATE ELECTIONS, OF QUESTIONS OF PUBLIC POLICY.

*Be it enacted by the senate and house of representatives in general court assembled, and by the authority of the same, as follows:*

SECTION 1. On a request signed by one thousand voters, asking for the submission of any question for an expression of opinion and stating the substance thereof, the secretary of the Commonwealth shall transmit such request to the State ballot law commission, who shall determine if such question is one of public policy, and if they so determine, shall draft it in such simple, unequivocal, and adequate form as they may deem best suited to secure a fair expression of opinion. Thereupon the secretary shall prepare and furnish suitable forms; each to contain spaces for not more than one hundred signatures, and if such forms shall be signed by five thousand voters, he shall upon the fulfillment of the requirements of this act place such question on

not in our laws but in the fundamental principles of our government. What I am about to say to you was prepared some months ago, before I left Washington, because I thought that I might desire to discuss this question after I had come home, and I wished to speak, whenever the opportunity occurred, with care and deliberation. This argument was not designed for a special audience, but for any audience of any kind that might care to listen to it, because it concerns equally all citizens of Massachusetts. I therefore do not address you merely in your capacity as representatives of our great labor organizations, but in your larger capacity as American citizens, interested above all in the welfare of the community and in the safety and permanence of the republic.

the official ballot to be used at the next State election. Forms shall bear the date on which they are issued, and no applications made on forms issued more than twelve months before the election concerned shall be received.

SEC. 2. Signers of requests for the issuance of forms and signers of applications shall append to their signatures their residence, with street and number, if any, and shall be certified as registered voters by the proper registrars of voters. One of the signers to each paper shall make oath of the genuineness of the signatures thereto, and a notary public, justice of the peace, or other magistrate, when taking such oath, shall satisfy himself that the person to whom the oath is administered is the person signing such paper, and shall so state in his attestation of such oath. All provisions of law relating to nomination papers shall apply to such requests and applications as far as may be consistent.

SEC. 3. Applications shall be filed with the secretary sixty days before the election at which the questions are to be submitted. Not more than four questions under this act shall be placed upon the ballot at one election, and they shall be submitted in the order in which the applications are filed. No question negatived, and no question substantially the same, shall be submitted again in less than three years.

There was reported to the legislature during its last session an act known as the "Public Opinion Bill." It was brought up in the house, and after a full and very able debate was defeated by a decisive majority. But although this bill and its purposes were well understood in the legislature, I do not think that the gravity of the measure and its far-reaching effect were fully appreciated by the people generally. As a matter of fact, no more fundamental and far-reaching measure has been presented to the legislature of Massachusetts within my recollection. It was not a mere change in legal practice, nor an alteration of long-established laws, nor even a constitutional change, which was proposed. The bill involved all these and much more, for if carried out logically to its full extent, it would mean nothing less than a complete revolution in the fabric of our government and in the fundamental principles upon which that government rests. This may seem an extreme statement, but I think it is susceptible of absolute demonstration, because this bill, if it should become law, would undermine and ultimately break down the representative principle in our political and governmental system.

To make my meaning perfectly clear it will be necessary to consider briefly and historically the principles upon which all government rests and the instruments by which it is carried on. Our division of the departments of government into executive, legislative, and

judicial, with which we are entirely familiar, and which the Constitution of the United States made co-ordinate and independent, is not a new classification, but represents in whole or in part the recognized and essential foundations of all modern governments. The first method of government devised by man took the very natural form of a leader or chief. The recognition of a leader, indeed, may almost be described as a natural instinct, for leaders are common among herds of wild animals. The organization of government, therefore, by the recognition of a chief whose direction and command have greater or less authority is found even among the most primitive races of men, except perhaps among a very few tribes in the lowest stages of development who live in a condition of practical anarchy. The leader or chief of the savage tribe is the executive. He often, in the earliest times, combined with the executive power the religious function of high priest and the judicial function of deciding disputes among his followers. When we come to the great empires of which we have the earliest records, we find the executive fully developed, sacred in his person, and vested with authority which in effect made the government a despotism. All despotisms consist in the absorption of power by the executive, whether that executive is a single autocrat, as is usual, or a narrow oligarchy like the Council of Ten at Venice. The despot may or may not have ceased to exercise the judicial

function personally, but if he has created judges they exercise their powers only in his name. As for laws, he makes them all himself, and you can read to-day the laws of Babylon promulgated six thousand years ago and bearing the name of the king who made the code. In the supposed power of the king to cure disease by his touch, which was exercised in England by Queen Anne only two hundred years ago, as well as in the theory of the divine right of kings and in the right of the subject to appeal to the king for redress, which have endured to our own times, you may witness the survival of the doctrines of the most ancient governments known, when all functions, religious, judicial, and legislative, were represented by the executive. Coming down from the most ancient times we find in Greece and Rome a theory of government not known, so far as we are aware, to the more ancient Eastern monarchies. The governments of Greece, as a rule, and the government of Rome were founded on the principle that the freeborn people of the city should govern themselves and choose their executive officers; in other words, we have there the idea of the New England town meeting. It would consume too much time for me to trace in detail the story of Greek and Roman government. The Greek cities were torn with factions, which led to the banishment of one party when the other was in power, to constant lapses into tyranny, and to complete inability to build up a strong, exten-

sive, well-organized state. Even the genius of Alexander failed to create a Greek empire, and when he died all that he had brought together under a single head fell to pieces. Rome started and went on for many centuries with the government of a city democracy torn by the bloody strife of classes and varied by relapses into oligarchies and dictatorships. The Romans had in the highest degree the genius of government as well as the genius for war, but nevertheless when their dominions had become almost coextensive with the civilized world, government by the great senatorial families, tempered by the mob of the Roman Forum, went to pieces in corruption and disorder and the earlier and simpler form of an all-powerful executive supervened.

From the break-up of the Middle Ages, which succeeded the fall of the Roman Empire, gradually emerged the kingdoms of modern Europe. In every case but one those kingdoms developed into autocracies, great or small. That single exception was England, and it is merely reiterating a truism to say that what saved England from becoming one of the despotisms which arose and flourished in Europe after the breakdown of the feudal system was her Parliament. In that Parliament we find for the first time, on a large scale, the representative principle. England did not have as pure a democracy, in theory or practice, as Greece or Rome, but both Greece and Rome

lost their liberties and England saved and extended hers. The rise of the modern despotisms of Europe, after the beginning of the sixteenth century, was marked by the gradual disappearance of those local representative bodies which had existed in the Middle Ages. The city republics of Italy, based on the theory of Rome and Athens, fluctuated between anarchy and tyranny until they all fell into the hands of domestic or foreign despots. Holland alone, of all the countries of Europe, preserved the freedom of her cities and her representative system, and it was Holland, a part of the empire of Charles V, which broke the power of Spain, and retaining the principle of representation, became under republican forms a free and powerful state.

Wherever you look into the history of the last four hundred years you will find that the rise and the power of the representative body are coincident with liberty, and that the rise of despotism is coincident with the breakdown of whatever representative bodies there may have been. The history of the representative principle in modern times is the history of political freedom, and this representative principle is the great contribution of the English-speaking people and of the period since the Renaissance to the science of government. Without that principle the democracy of Greece failed to build up a nation coextensive with the spread of the Greek settlements and conquests,

while that of Rome sank under a complete despotism. The empire of the first Napoleon and of the third Napoleon as well were both reared on the ruins of the legislative bodies of France. Examples might be multiplied, but nothing is clearer than that every lasting advance which has been made toward political freedom has been made by and through the representative principle. Even to-day the struggle in Russia seeks, as its only assurance, the establishment of a representative body. Indeed, the movement for a larger political freedom and for the right of the people to take part in their own government, which has filled Europe for the last century, is penetrating now to countries outside the pale of Western civilization, and the existence of this movement in Persia, in Turkey, and in China is manifested by the efforts in all these countries toward securing representative institutions.

In a word, it may be said that the advance toward political liberty and the establishment of the rights of the people to govern have been coincident and gone hand in hand with the progress of the representative principle. It is also to be noted that the independence of the judiciary, the other great bulwark of liberty and of the rights of the individual, has followed everywhere upon the growth and success of the representative principle in government. The destruction of this principle, therefore, would mean reaction and the return to the system of an all-powerful executive. There



could be no greater misfortune to free popular government than to weaken or impair the principle of representation, and the quickest way to break that principle down is to deprive the representative bodies of all responsibility and turn them into mere machines of record. You cannot take from your representative bodies all power of action and all responsibility and expect them to survive. If you bind a man's arm to his side and prevent its use and motion the muscles weaken, the arm withers, and in time becomes atrophied and useless. If you force the legislature to deal with certain measures under a mandate which practically compels them to vote upon these measures in only one way, you take from your representatives all responsibility and all power of action, and the representative principle in your government will atrophy and wither away until it becomes in the body politic, like some of those rudimentary organs in the natural body, quite useless and often a mere source of dangerous disease. This Public Opinion Bill does this very thing, for it aims directly at the destruction of representative responsibility, and I think, although it received the support of many excellent people who did not pause to consider it carefully, that it found its origin among those small groups whose avowed purpose is to destroy our present institutions and forms of government and replace them with socialism or anarchy.

The advocates of the bill continually raised the

parrot cry that those who opposed it did not trust the people, and some persons were found who actually seemed to think that instructions from a town or other constituency, which were more common a century ago than they are to-day, were equivalent to a Public Opinion Bill and that there was some legal obstacle at the present time to such instructions. There is no relation or parallel whatever between instructions of this kind and the scheme proposed by this bill, nor is there anything to prevent instructions by a constituency except the practical one caused by the increase in numbers of the electorate. The use of instructions has died out, although they are still employed occasionally, simply because improved means of communication and the growth of commercial, labor, and trade organizations have made other methods of reaching the same result quicker, easier, and more practicable. But this fact does not impair the rights of a constituency in the least, and any constituency can avail itself of this right if it so desires, for it is one of which no constituency could be deprived except by constitutional amendment.

Every constituency, I repeat, has the right now, as always, to issue instructions to its representative if it can agree upon them, just as it has the right of petition; but that is a very different thing from the final determination by ballot of every possible abstract question by a popular vote. It is worth while to emphasize

this difference, for it throws light upon the whole question. The constituency, in the first place, instructs only its own representatives. It does not undertake to instruct the representatives of other constituencies, but only its own, thereby recognizing the representative character of the member or senator or congressman whom it has chosen. The instructions, moreover, are passed by a meeting where they can be discussed, amended, and modified, and where the arguments of both majority and minority can be heard. The constituency in passing instructions is not confined to a blind, categorical "yes" or "no" upon a question where neither amendment, discussion, nor modification is possible. They act themselves only with the same safeguards which have been thrown about the passage of laws in the legislature. They are not the helpless instrument of a plebiscite, but freemen setting forth their opinions in the manner which the history of free government has consecrated. Instructions from a constituency are the very antithesis of the "mandate" which it is proposed to extort or cajole from the people by such a scheme as this Public Opinion Bill.

As to the cry that those who opposed this bill showed by so doing that they did not trust the people, no more unfounded and misleading argument was ever uttered. Suppose I say to you that I do not think that you can read in the dark. Do I thereby imply that your eyes

are bad or that I think that you are ignorant and illiterate? Because I say that you cannot read in the dark am I therefore to be accused of exhibiting distrust in your intelligence or your education? What I distrust and assail as a barrier to reading is the darkness. In order to read you must have light. In order to make wise laws you must have light to see whither you go and not make wild plunges in the dark. For good laws you must have good methods of lawmaking. I do not distrust the people who make the laws but I distrust methods of lawmaking which would force good people to make bad laws.

More than three hundred of our Massachusetts communities govern themselves in town meeting. They are the purest democracies the world can show. They elect their executive officers by ballot. But all questions as to the policies and government of the town are submitted to the meeting on the warrant and are open to debate, to amendment, to reference to a committee and to postponement. Do I distrust the people because I say that these questions ought to be submitted in precisely this way and that this opportunity for debate, amendment, and postponement should be given and that the voter should not be compelled to vote "yes" or "no" upon every question in the warrant without debate or delay? The people of our towns would never assent to such a change or allow themselves to be deprived of full opportunity

for debate, amendment, and postponement, and yet that is just what the Public Opinion Bill proposes to inflict upon the people of the State at large.

Here is another illustration of my meaning drawn from the very principle which I seek to defend and preserve. I believe profoundly in representative government, but when I say that I am opposed to a single representative chamber, I am not showing distrust in representative government, but in a form of representative government which history and experience have proved to be fertile in evils.

Let me, however, take an example, which exhibits my meaning and demonstrates my proposition better than anything else, from our administration of justice, at once the corner-stone and the bulwark of a free and well-ordered state. We determine differences between individuals and we try men and women for crime by judges and juries. Is it to be argued that because we say that a man shall not be tried for his life by a mass meeting or a popular vote, but by a judge and twelve jurymen under the forms and regulations of law, we do not trust the people? Has not experience shown that no man's rights or life would be safe unless there was secured to him under the strongest guaranties the right of trial by jury? The lynch law, against which all decent men protest, is often carried out by mass meetings frequently representing the passions and beliefs of an entire community. Is it a failure to trust the

people because we insist that the legal rights of the people themselves cannot be preserved unless they are determined by a judge and jury? It is exactly the same in regard to legislation. Intelligent laws cannot be passed without consideration, debate, deliberation, and the opportunity for amendment. To answer "yes" or "no" on an abstract question is to legislate by ballot without any of the safeguards which representative government throws around the making of laws. Plebiscites of this sort have determined and fixed the power of autocratic emperors, but they have never made the laws of a free people. This Public Opinion Bill is not even a referendum, for the referendum submits to popular approval a perfected measure, and in the case of purely local questions it is often used by our legislature. What is called the initiative is now covered, for all reasonable purposes, by the right of petition, but this Public Opinion Bill puts both initiative and referendum into one act and provides for the submission to the people not of perfected law but of any abstract question which any thousand people choose to suggest and which any five thousand voters can be found to sign, and upon which the people have no opportunity to do more than vote categorically "yes" or "no." You cannot hesitate, you cannot modify, you cannot amend, you cannot postpone. The pistol is at your head; throw up your hands and answer "yes" or "no" at your peril. There are four questions

on the ballot. Only one probably has been discussed, and that insufficiently, for perhaps thirty days. No matter; you must answer "yes" or "no" on all four, and the legislature must in reality, whatever theoretical liberty it is supposed to retain, obey the mandate. There is to be no chance for reconsideration, no time for reflection or for second thought.

Those who supported this bill appeared to be under the pleasing delusion that no questions would find their way onto the ballot except those which made for the obvious improvement of society or those which advanced their own particular interests. There could be no more mistaken belief. Under this bill every sort of question would make its way onto the ballot. The only real condition is the five thousand signatures, for one thousand voters can suggest, and the duty of the officer who puts the question upon the ballot is purely ministerial, so that to obtain these five thousand signatures would only mean the expenditure of a little time and a little money. The adroit and unscrupulous, with schemes for their own profit or with devices to injure their opponents, would be much more likely to get questions placed upon the ballot than any one else. Propositions which if adopted might do infinite injustice to the great body of our working people, could easily be framed so as to appear quite harmless and catch the popular vote. Then, if adopted, the legislature would be bound under the mandate by the power-

ful instinct of self-preservation and the innate desire of shifting responsibility, if not by the terms of the statute itself, to embody them in the law. I have seen it asserted that this system would break the power of the "boss" and the lobbyist. On the contrary, it would give to those who make a business of politics and who seek legislation for their own profit an unrivalled opportunity, for they would be always prepared; they would have their five thousand signatures always ready; they would shut out by dummy questions all others which they did not like and place upon the ballot questions artfully drawn to serve their own purposes. Where organization, money, and perfect readiness are all that are required, the professional politician with a personal or pecuniary interest at stake and untroubled by scruples will defeat and outwit the amateur and outsider nine times in ten. It is exactly because I trust the people and desire that they should have every advantage that I oppose such revolutionary legislation as this. To compel the people to legislate in a manner practically impossible for any very large body of voters is to do an injustice to the people themselves. It would be like compelling the people to decide by ballot upon the authority of what they happened to have read in the newspapers or to have heard from their neighbors whether a man was guilty of murder or not, and then find fault with them because they reached an erroneous decision.



The people would not be to blame for the wrong decision, but those who forced upon them a method of trying a criminal case which in its very nature was utterly impossible in practice. Under this bill the people are to be asked to legislate by saying "yes" or "no" to any question, no matter how abstract or how complicated, which any one can manage to have placed on the ballot. To deal with such questions by a categorical answer is absurd. It is the easiest thing in the world to frame a question to which a categorical "yes" or "no" is impossible. Take the familiar one. "Have you stopped beating your wife?" Answer it "yes" or "no" and see where it leaves you. Abstract questions can just as easily be framed to which a categorical "yes" or "no" would be utterly misleading, perilous, and unrepresentative. No people, no matter how intelligent, could legislate in such a way as this otherwise than disastrously. There would be no opportunity for modification or amendment, for repeated votes on different stages, or for debate. There would be but little chance for discussion, and good legislation without the opportunity for debate, amendment, and deliberate consideration is an impossibility. Less than one per cent of the voters of the commonwealth would have under this bill the power to force upon ninety-nine per cent of the voters any kind of question they chose to devise and compel them to say "yes" or "no" to it. Thousands of voters either through indifference

or still more through lack of opportunity to understand the question would refrain from voting, and an imperative mandate to the legislature might be carried by a small minority of the voters.

Let me ask your attention to some figures in order to give you a vivid idea of what I mean and to show how imperfectly "yes" and "no" votes, taken in this way, can be relied upon as reflections of the real will and true opinion of the people. These votes which follow were given upon constitutional amendments, the most serious questions which can be submitted, because they involve changes in our organic law and were submitted with all the care and deliberation which the framers of our Constitution could provide.

I ask you to consider those figures, for they demonstrate the utter falsity of the proposition that you can reach a true expression of the opinion of the people of Massachusetts by the methods proposed in this bill. In no one of these ten instances did one half, in most of them nothing like a half, of the actual registered voters of the State cast their votes on the amendments thus submitted. Of those who went to the polls, in three cases less than one half voted either way on the amendments. In one case barely more than half voted, and in the remaining six more than a third to more than a quarter failed to vote either way. In no case was the amendment either carried or defeated even by a majority of those who went to the polls, far less by a

POPULAR VOTES UPON ARTICLES OF AMENDMENT TO THE CONSTITUTION OF MASSACHUSETTS

Date	Amendment	Vote on amendment			Vote for governor	Not voting
		Yes	No	Total		
Nov. 4, 1890	Change of residence in the State not to disqualify a voter for certain offices for six months. . . .	97,177	44,686	141,863	285,526	143,663
	Certain soldiers, etc., not disfranchised who have received aid from town or not paid a poll tax. . . . .	100,109	27,021	127,130		
Nov. 3, 1891	Abolishing tax qualification for voters for governor, lieutenant-governor, and members of the general court. . . . .	144,931	53,554	198,485	321,650	123,165
	A majority of each branch of the general court shall constitute a quorum. . . . .	152,688	29,590	182,278		
Nov. 8, 1892	Abolishing property qualification for office of governor..	141,321	68,045	209,366	399,698	190,332
Nov. 7, 1893	Abolishing mileage to members of the general court. . . .	125,375	80,855	206,230	365,012	158,782
Nov. 6, 1894	Election of commissioners of insolvency abolished. . .	114,499	34,741	149,240	335,354	186,114
Nov. 3, 1896	Biennial elections—Treasurer's term of office limited to three years. . . . .	115,505	161,263	276,768	385,064	108,296
	Biennial election of senators and representatives. . . . .	105,589	156,211	261,800		
Nov. 5, 1907	Authorizing the governor, with the consent of the council, to remove justices of the peace and notaries public. . . . .	178,005	35,989	213,994	373,695	159,701

majority of the voters of the State, and yet this list includes the vote on biennial elections, which was debated and discussed everywhere for many weeks.

Let me take another example from a neighboring State, the State of Maine.

VOTE UPON CONSTITUTIONAL AMENDMENTS AND LAWS  
SUBMITTED TO THE PEOPLE OF MAINE

Year	Amendment	Vote on amendment			Vote for governor	Not voting
		Yes	No	Total		
1875	Election of State senators by a plurality vote	16,419	4,970	21,389	} 111,665	{ 90,276
	Codification of amended constitution.....	17,841	3,104	20,945		
1880	Election of governor by plurality.....	57,015	35,402	92,417	147,802	55,385
1884	Amendments to prohibitory laws.....	70,789	23,811	94,600	142,107	47,507
1888	Term of office of State treasurer.....	12,947	10,249	23,223	145,384	122,160
1892	Whether adjutant-general should be appointed or elected....	9,721	9,509	19,230	} 130,962	{ 111,732
	Educational qualification of voters.....	25,775	18,061	43,836		
1900	Whether office of State auditor should be created.....	13,095	16,609	29,704	117,878	88,174
1904	Increasing compensation of members of the legislature.....	11,047	18,061	44,582	131,512	86,930

Let us examine this table as we did that of Massachusetts. In only two cases out of nine did more than half of the voters who went to the polls vote upon the question submitted, and in each of those cases a third of those who went to the polls failed to vote on the submitted question, quite enough in each case to have reversed the result. In five of the remaining seven

less than a fifth of the voters who went to the polls, and in two only a quarter, voted on the submitted question.

The people of Maine and Massachusetts are of a high average of intelligence. They are active, alert, and have been for generations accustomed to deal with every form of political questions, and yet these tables show that even on constitutional amendments submitted on the ballot no expression could be obtained from a large majority of the voters, and, as a rule, not even from half of those who voted for governor and representative. It is apparent, in other words, that the people of these States do not like to govern themselves in this way and that the very men who will vote for governor and representative will not vote on submitted questions, because, as a rule, they do not feel that they have had opportunity to consider them and do not take a proper interest in them. Such a condition of things proves that to substitute legislation by ballot for legislation by representation is to cripple the rights of the people and permit interested, fanatical, or corrupt factions, by superior organization and intensity of purpose, to dictate the laws of the entire community.

These figures show the absolute truth of my assertion that questions submitted in this way are decided by a majority of a minority, and if this is true of constitutional amendments, fully and plainly stated, you can

imagine what it would be on abstract questions, unknown, blind, uncomprehended, and incomprehensible. These figures demonstrate beyond a peradventure that no true public opinion can be obtained in this way, but that on the contrary this bill is a scheme to secure legislation which could not obtain the assent of the voters properly expressed through chosen and responsible representatives. It is a device to enable small and active minorities to obtain legislation which they could not secure by legitimate methods. Representatives represent the whole people. This bill would force upon us a government by a fraction of the people and would defeat the will of the real majority of the people themselves.

Yet the legislature would have no choice. They would be bound in conscience and in practice, if not by the words of the statute, bound in a manner and forced by a pressure from which there would be no escape, to obey the mandate no matter how obtained, and no man could tell in what form of law the mandate would be finally embodied. The chances are that the law under the pressure of the mandate would be the work of extremists and contrary to the wishes even of those who voted "yes" on the abstract proposition. There could be no greater travesty on popular government than a system which would permit a majority of a minority of the voters to force upon the State any law they chose. It would give an enormous oppor-

tunity to the power of money skilfully and corruptly used. It would impair the rights of the people and leave those of the individual naked and defenceless. The result would not be an expression of the popular will, but a mechanical parody of that will so gross that even its authors would gaze upon it with amazement and disgust.

All these plans to make the people carry on their government by impracticable methods are not only unjust and dangerous to the people and to the public welfare, but they tend to bring all popular government into discredit. Do not misunderstand me. I attach no superstitious reverence to forms of government. I make no fetich of laws and constitutions, for constitutions are made for men, not men for constitutions. I have no patience with the theory held by some persons, and often pernicious in its activity, that human nature can be changed and all men made virtuous and happy by statute. People, according to my observation, get in the long run the government they desire and deserve, and if they suffer from bad government, it is because they are too inert, or too incapable, or too timid, or perhaps too corrupt to secure anything better. Government and the success of government in the last analysis depend on the character of the people themselves. People with a high capacity for self-government will make a bad system work well or at least tolerably well, while people without that capacity

will come to confusion and ruin under the most ideally perfect system which the wit of man can devise. But while it is profoundly true that people make laws, not laws people, the importance and effect of laws, constitutions, and political institutions are none the less very great. The essential point is to comprehend in what that importance consists and to gauge rightly the effect and educational force of laws and constitutions; in a word, to realize what laws can and what they cannot do. We must not forget that if statutes cannot change the laws of nature, it is equally a mistake to accept the Quietist doctrine of Pope when he said in his familiar lines:

“For forms of government let fools contest;  
Whate’er is best administered is best.”

Allow me now to illustrate my meaning. Wise economic laws affecting the currency or the tariff cannot of themselves make prosperity. They can help very greatly to bring prosperity if a people be energetic and industrious and other conditions are favorable, but alone they cannot do it. On the other hand, bad economic laws, especially such as affect the circulating medium, can unaided and alone bring panic and disaster. To state this as a general proposition, we may say that while the effect of good economic laws for good is limited, the effect of bad economic laws for evil is unlimited. The power of economic



statutes to injure is much greater than their power to benefit.

This rule applies not only to all economic legislation but to all laws. There is no panacea for human ills to be found in statutes. Statutes may help greatly, they may and do modify and alleviate and improve evil conditions, they may, according to the theory of Aristotle, direct the conduct of men to a moral result, but there their possibilities end, and many misfortunes have happened to mankind from the mistaken conception of the potentialities of statute-making. On the other hand, the power of bad laws to bring on ruin, disaster, civil strife, and the downfall of governments and nations is practically unbounded. It is, then, of the last importance to consider carefully what the full effect of any law will be and not to open the door for the sake of an apparent remedy for some special evil to a thousand worse evils which might involve all in a common disaster. Therefore laws not only assume a vast importance, but also the methods and instrumentalities by which they are made. Good laws are not to be expected if you impose conditions upon their making incompatible with good results. The best glazier in the world cannot cut a square of glass if you insist that he shall do it with a broadaxe or a pointed stick. Under such conditions he would merely smash the glass, and you and not he would be to blame. You must give him a diamond point, and you will get your

window-pane. You can impose conditions upon a people under which it will be impossible for them to secure good legislation, and it will not be any reflection upon them or their capacity for self-government if they bring forth laws which work ruin and disaster as widespread as they are needless. It shows no more distrust to insist that the people shall use wise and well-tried methods of legislation to obtain the laws they desire than it shows distrust of the glazier to insist that he shall use a proper tool to cut his square of glass.

I have heard it asked whether those who opposed this bill thought that the American people had ever decided a great question wrongly. My answer would be "no" so far as concerns all the greatest questions of our history which have been decided by the people on full consideration and under the conditions prescribed by our Constitutions and laws. The Revolution, the adoption of the Constitution, the preservation of the Union, the abolition of slavery, the integrity of the public debt, the maintenance of the gold standard, all these great questions were decided by the people rightly and nobly, but only after years of discussion and under the conditions of representative government.

If, on the other hand, you ask me if the popular decision in a moment of excitement and clamor, with no opportunities for deliberate discussion, has always been right, I answer "no," and I will give you an example from the history of this State. A little more

than fifty years ago there was a movement here called the Native American or Know Nothing movement. It was carried on by secret oath-bound organizations. They not only swept the State and crushed Whigs and Democrats out of existence, but they actually elected all but two of the members of the legislature. If they had not been restrained by the Constitution and by the laws and the methods of representative government, they would have excluded from citizenship every man of foreign birth or of a different religion from their own. If they had been acting under a popular mandaté, which would have been easily obtained in that year, to the effect that only citizens of American birth and of the Protestant faith should be entitled to citizenship, that constitutional change would have been made. But as there was no Public Opinion Law the legislature were only bound to the general principles of their party; they were not deprived of motion and sense of responsibility by a mandate. They were open, even with all their power, to the effect of public opinion expressed by a strong minority outside, and they had time for reflection and for cooling down. Thus, by the forms of representative government and by the absence of anything resembling the mandate for which the Public Opinion Bill provides, they were held back from the violent extremes which the passions flagrant at the election would have demanded and enforced. I think it was very fortunate that they were so restrained, because the decision

of the people at the polls in that year of passion and excitement was, in my opinion, utterly wrong, when tried by the true principles of free American government. In a few years every one else thought so, too, after the madness had passed. You say such things could not happen to-day. I hope not, but human passions have not changed, and in moments of excitement men are capable of acts which, on reflection, they would not entertain for a moment. It is to secure ample opportunity for deliberation and reflection that representative government exists, and it is inconceivably precious not only to the individual man, whose rights are at stake, but to the wider interests of the whole community.

I trust the people fully. I believe, what the authors of the bill deny, that they are able to choose their own representatives and to control them. I do not think the people are so weak or so stupid that they cannot choose men who will fitly represent them, and that they cannot reject their representatives if those representatives do not perform their duties. I think the people are eminently capable of governing themselves by proper methods, and that their power should not be distorted and crippled by impossible devices. But the great and fundamental objection to this bill is the destruction of the representative principle which it necessarily involves. When that is broken down nothing remains but the executive and the courts.

With the representatives deprived of power the courts would not long retain their independence, and when the executive department alone survives we are well on the road to despotism. The resort to the plebiscite is the favorite device of the usurper and saviour of society. His opportunity comes when disorder, license, and wild legislation have driven the mass of men to a readiness to sacrifice liberty in the determination to have peace and order, a sad and desperate situation, familiar, unhappily, in the world's history. Moreover, the advent of the strong man and the army is always coincident with the breaking down of representative government. What we want, above all things, is to preserve the representative bodies which have ever been the guardians of freedom and of popular liberties in this country. I trust the people so thoroughly that I believe they can conduct their government with honor and success, as they have done for so many generations. Times change and conditions change with them. We must meet the new times and the change in conditions with the legislation which they demand, but in dealing with our new problems it is not necessary to cast away the instrument by which every reform and every improvement have hitherto been effected. I am not one of those who believe that all wisdom died with our forefathers. I am equally far from believing that all wisdom was born yesterday. This is not a new question, but involves the oldest theories of government,

and here, if anywhere, history and experience are safe and illuminating guides which only ignorance and folly would neglect or disregard. The great men who framed our Constitution provided both in state and nation for checks and balances because they believed that the rights of the people could only be protected if every possible safeguard was thrown around the law-making power. They believed that that power ought only to be exercised with the utmost care and deliberation, and in seeking that care and deliberation they believed that they were protecting the rights of the people. They saw in hasty legislation great perils, and they never had the slightest fear that the legislative body would not respond quickly enough to the popular wishes. They had a great dread of executive power and a deep desire to protect the rights of minorities. The majority, they believed, ought to rule, but they wished to be very sure that majority rule should not be rashly or hastily exercised. They wished the members of a majority to remember that they might find themselves any day in a minority, and therefore they took the utmost pains to secure every opportunity in legislation for debate and amendment.

“They wished men to be free,  
As much from mobs as kings, from you as me.”

Experience has shown us the justice of their opinions. This bill invites us to cast aside all that they

did, break down every method of lawmaking which they established, and reject that principle which they most valued—the principle of representation. I say, reject the principle of representation, because when you impair it and take from your representatives all power and all responsibility, the principle of representation falls. No men invested with the power to make laws, but relieved of all responsibility for the laws they make, are to be trusted. We may change many things, we may abolish laws and put new ones in their place, but we cannot alter the fundamental principles of our government and expect the fabric to stand. If we undermine and overthrow the bulwarks of ordered liberty and individual freedom, the citadel itself will not long survive. Any measure which breaks down free representative government, advances us proportionately on the road to executive government, to the rule of one man. This Public Opinion Bill will reduce the representative on one question after another to the level of a machine. As the representative principle sinks the executive power rises. I believe in maintaining both and maiming neither. I am opposed to crippling and extinguishing representative government. I love freedom and hate tyranny, and anything which depresses the one and opens the road to the other will meet with resistance from me. It is for this reason that I oppose this bill.

## THE CONSTITUTION AND ITS MAKERS <sup>1</sup>

BEFORE this society and on such an occasion, to speak on any topic not connected with the history of our common country would hardly be possible and would certainly not be fitting. I have, therefore, chosen a subject which touches the history of the United States at every point. I shall try to set before you some of the results of a great work in which your State and mine alike took part a century and a quarter ago, and which possesses an interest and an importance as deep and as living to-day as at the moment of its inception. I shall touch upon some present questions, but I shall speak without the remotest reference to politics or parties, for my subject transcends both. I shall speak as a student of our history with reverence for the past and with a profound faith in the future. In a word, I shall speak simply as an American who loves his country "now and forever, one and inseparable."

A little less than twenty-five years ago great crowds thronged the streets of Philadelphia. Men and women were there from all parts of the United States; the

<sup>1</sup> An address delivered before the Literary and Historical Association of North Carolina at Raleigh, N. C., November 28, 1911.



city was resplendent with waving flags and brilliant with all the decorations which ingenuity could suggest, while the nights were made bright by illuminations which shone on every building. Great processions passed along the streets, headed by troops from the thirteen original States, marching in unusual order, with Delaware at the head, because that little State had been the first to accept the great instrument of government which now, having attained its hundredth year, was celebrated in the city of its birth. Behind the famous hall where independence was declared an immense crowd listened to commemorative speakers, and the President of the United States, a Democrat, honored the occasion with his presence and his words.

Two years later, in 1889, the same scenes were repeated in New York. Again the cannon thundered and again flags waved above the heads of the multitude gathered in the streets, through which marched a long procession, both military and civil, headed as before by the representatives of the original thirteen States. Again, at a great banquet, addresses were delivered, and once more the President of the United States, this time a Republican, honored the occasion by his presence, and in the name of all the people of the country praised the work of our ancestors.

In Philadelphia we celebrated the one-hundredth anniversary of the formation of the Constitution of the United States. In New York we commemorated the

one-hundredth anniversary of the inauguration of the government which that Constitution had brought into being. Through all the rejoicings of those days, in every spoken and in every written word, ran one unbroken strain of praise for the great instrument and of gratitude to the men who, in the exercise of the highest wisdom, had framed it and brought it forth. All men recalled that it had made a nation from thirteen jarring States; that it had proved in its interpretation flexible to meet new conditions and strong to withstand injustice and wrong; that it had survived the shock of civil war; and that under it liberty had been protected and order maintained. The pæan of praise rose up from all parts of this broad land unmarred by a discordant note. Every one agreed with Gladstone's famous declaration, that the Constitution of the United States was the greatest political instrument ever struck off on a single occasion by the minds of men. We seemed, indeed, by all we then said and did to justify those foreign critics who reproached us with our blind reverence for our Constitution and our almost superstitious belief in its absolute wisdom and unexampled perfections.

Those celebrations of the framing of the Constitution and of the inauguration of the government have been almost forgotten. More than twenty years have come and gone since the cheers of the crowds which then filled the streets of New York and Philadelphia

— since the reverberations of the cannon and the eloquent voices of the orators died away into silence. And with those years, not very many after all, a change seems to have come in the spirit which at that time pervaded the American people from the President down to the humblest citizen in the land. Instead of the universal chorus of praise and gratitude to the framers of the Constitution the air is now rent with harsh voices of criticism and attack; while the vast mass of the American people, still believing in their Constitution and their government, look on and listen, bewildered and confused, dumb thus far from mere surprise, and deafened by the discordant outcry so suddenly raised against that which they have always revered and held in honor. Many excellent persons believe apparently that beneficent results can be attained by certain proposed alterations in the Constitution, often, I venture to think, without examination of the history and theory of government and without measuring the extent or weighing the meaning of the changes which are urged upon us. But it is also true that every one who is in distress, or in debt, or discontented, now assails the Constitution, merely because such is the present passion. Every reformer of other people's misdeeds — all of that numerous class which is ever seeking to promote virtue at somebody else's expense — pause in their labors to point out the supposed shortcomings of our national charter. Every

raw demagogue, every noisy agitator, incapable of connected thought and seeking his own advancement by the easy method of appealing to envy, malice, and all uncharitableness — those unlovely qualities in human nature which so readily seek for gratification under the mask of high-sounding and noble attributes — all such people now lift their hands to tear down or remake the Constitution. In House and Senate one can hear attacks upon it at any time and listen to men deriding its framers and their work. No longer are we criticised by outsiders for having a superstitious reverence for our Constitution. Quite recently I read an article by an English member of Parliament (Mr. L. T. Hobhouse), a Liberal, I believe, with Socialist proclivities, who said that this reproach of an undue veneration for the Constitution ought no longer to be brought against us, because beneficent and progressive spirits were already beginning to pull it to pieces and were seeking to modernize it in conformity with the clamor of the moment. All this is quite new in our history. We have as a people deeply revered our Constitution. We have realized what it has accomplished and what protection it has given to ordered freedom and individual liberty. Even the Abolitionists, when they denounced the Constitution for the shelter which it afforded to slavery, did not deny its success in other directions, and their hostility to the Constitution was one of the most deadly weapons used against them.

The enmity to the Constitution and the attacks upon it which have developed in the last few years present a situation of the utmost gravity. If allowed to continue without answer, they may mislead public opinion and produce the most baneful results. The people of the United States may come to believe that all these attacks, in a measure, at least, are true. Therefore if they are not true, their falsity ought to be shown. Beside the question of the maintenance or destruction of the Constitution of the United States all other questions of law and policies sink into utter insignificance. In its presence party lines should disappear and all sectional differences melt away like the early mists of dawn before the rising sun. The Constitution is our fundamental law. Upon its provisions rests the entire fabric of our institutions. It is the oldest of written constitutions. It has served as a model for many nations, both in the Old World and in the New. It has disappointed the expectations of those who opposed it, convinced those who doubted, and won a success beyond the most glowing hopes of those who put faith in it. Such a work is not to be lightly cast down or set aside, or, which would be still worse, remade by crude thinkers and by men who live only to serve and flatter in their own interest the emotion of the moment. We should approach the great subject as our ancestors approached it — simply as Americans with a deep sense of its seriousness and with

a clear determination to deal with it only upon full knowledge and after the most mature and calm reflection. The time has come to do this, not only here and now, but everywhere throughout the country.

Let us first consider who the men were who made the Constitution and under what conditions they worked. Then let us determine exactly what they meant to do — a most vital point, for much of the discussion to which we have been treated thus far has proceeded upon a complete misapprehension of the purpose and intent of the framers of the Constitution. Finally, let us bring their work and their purposes to the bar of judgment, so that we may decide whether they have failed, whether in their theory of government they were right or wrong then and now, or whether their work has stood the test of time, is broad based on eternal principles of justice, and, if rent, or mangled, or destroyed, would not in its ruin bring disaster and woes inestimable upon the people who shall wreck their great inheritance, and like

“The base Indian, throw a pearl away,  
Richer than all his tribe.”

First, then, of the men who met in Philadelphia in May, 1787, with doubts and fears oppressing them, but with calm, high courage and with a noble aspiration to save their country from the miseries which threatened it, to lead it out from the wilderness of

distractions in which it was wandering blind and helpless, into the light, so that the chaos, hateful alike to God and man, might be ended and order put in its place. It is the fashion just now to speak of the framers of the Constitution as worthy, able, and patriotic persons whom we are proud to have embalmed in our history, but toward whom no enlightened man would now think of turning seriously for either guidance or instruction, so thoroughly has everything been altered and so much has intelligence advanced. It is commonly said that they dealt wisely and well with the problems of their day, but that of course they knew nothing of those which confront us, and that it would be worse than folly to be in any degree governed by the opinions of men who lived under such wholly different conditions. It seems to me that this view leaves something to be desired and is not wholly correct or complete. I certainly do not think that all wisdom died with our fathers, but I am quite sure that it was not born yesterday. I fully realize that in saying even this I show myself to be what is called old-fashioned, and I know that a study of history, which has been one of the pursuits of my life, tends to make a man give more weight to the teachings of the past than they are now thought to deserve. Yet, after all allowance is made, I cannot but feel that there is something to be learned from the men who established the government of the United States, and that their opinions,

the result of much and deep reflection, are not without value, even to the wisest among us.

On questions of this character, I think, their ideas and conclusions are not lightly to be put aside; for, after all, however much we may now gently patronize them as good old patriots long since laid in their honored graves, they were none the less very remarkable men, who would have been eminent in any period of history and might even, if alive now, attain to distinction. Let us glance over the list of delegates to the Constitutional Convention in Philadelphia in 1787. I find, to begin with, that their average age was 43, which is not an extreme senectitude, and the ages range from Franklin, who was 81, to John Francis Mercer, of Virginia, who was 28. Among the older men who were conspicuous in the convention were Franklin, with his more than 80 years; Washington, who was 55; Roger Sherman, who was 66; and Mason and Wythe, of Virginia, who were both 61. But when I looked to see who were the most active forces in that convention, I found that the New Jersey plan was brought forward by William Paterson, who was 42; that the Virginia plan was proposed by Edmund Randolph, who was 34; while Charles Pinckney, of South Carolina, whose plan played a large part in the making of the Constitution, was only 29. The greatest single argument, perhaps, which was made in the convention was that of Hamilton, who was 30. The



man who contributed more, possibly, than any other to the daily labors of the convention and who followed every detail was Madison, who was 36. The Connecticut compromise was very largely the work of Ellsworth, who was 42; and the committee on style, which made the final draft, was headed by Gouverneur Morris, who was 35. Let us note, then, at the outset that youth and energy, abounding hope, and the sympathy for the new times stretching forward into the great and uncharted future, as well as high ability, were conspicuous among the men who framed the Constitution of the United States.

Their presiding officer was Washington, one of the great men of all time, who had led the country through seven years of war, and of whom it has been said by an English historian that "no nobler figure ever stood in the forefront of a nation's life." Next comes Franklin, the great man of science, the great diplomatist, the great statesman and politician, the great writer; one of the most brilliant intellects of the eighteenth century, who in his long life had known cities and men as few others have ever known them. There was Hamilton, one of the greatest constructive minds that modern statesmanship has to show, to whose writings German statesmen turned when they were forming their empire forty years ago and about whom in these later days books are written in England, because Englishmen find in the principal author of the Federalist

the great exponent of the doctrines of successful federation. There, too, was Madison, statesman and lawmaker, wise, astute, careful, destined to be, under the government which he was helping to make, Secretary of State and President. Roger Sherman was there, sagacious, able, experienced; one of the leaders of the Revolution and a signer of the Declaration of Independence, as he was of the Constitution. Trained and eminent lawyers were present in Philadelphia in that memorable summer of 1787, such men as Ellsworth and Wilson and Mason and Wythe. It was, in a word, a very remarkable body which assembled to frame a constitution for the United States. Its members were men of the world, men of affairs, soldiers, lawyers, statesmen, diplomatists, versed in history, widely accomplished, deeply familiar with human nature. I think that without an undue or slavish reverence for the past or for the men of a former generation, we may fairly say that in patriotism and in intellect, in knowledge, experience, and calmness of judgment, these framers of the Constitution compare not unfavorably with those prophets and thinkers of to-day who decry the work of 1787, who seek to make it over with all modern improvements, and who with unconscious humor declare that they are engaged in the restoration of popular government.

That phrase is in itself suggestive. That which has never existed cannot be restored. If popular govern-

ment is to be restored in the United States it must have prevailed under the Constitution as it is, and yet those who, just now, are so devoured by anxiety for the rights of the people, propose to effect the restoration they demand by changing the very Constitution under which popular government is admitted by their own words to have existed. I will point out presently the origin of this confusion of thought. It is enough to say now that for more than a century no one questioned that the government of the Constitution was in the fullest sense a popular government. In 1863 Lincoln, in one of the greatest speeches ever uttered by man, declared that he was engaged in trying to save government by the people. Nearly thirty years later, when we celebrated the one-hundredth anniversary of the Constitution, the universal opinion was still the same. All men then agreed that the government which had passed through the fires of civil war was a popular government. Indeed, this novel idea of the loss of popular government which it is proposed to restore by mangling the Constitution under which it has existed for more than a century is very new; in fact, hardly ten years old.

This first conception of our Constitution as an instrument of popular government, so long held unquestioned, was derived from the framers of the Constitution themselves. They knew perfectly well that they were founding a government which was to be popular

in the broadest sense. The theory now sedulously propagated, that these great men did not know what they were about, or were pretending to do one thing while they really did another, is one of the most fantastic delusions with which agitators have ever attempted to mislead or perplex the public mind. The makers of the Constitution may have been right or they may have been wrong in the principles upon which they acted or in the work they accomplished, but they knew precisely what they meant to do and why they did it. No man in history ever faced facts with a clearer gaze than George Washington, and when, after the adjournment of the convention, he said, "We have raised a standard to which the good and wise can repair; the event is in the hands of God," he labored under no misapprehension as to the character of the great instrument where his name led all the rest.

It is the fashion to say that since then great changes have occurred and wholly new conditions have arisen of which the men of 1787 could by no possibility have had any knowledge or anticipation. This is quite true. They could not have foreseen the application of steam to transportation, or of electricity to communication, which have wrought greater changes in human environment than anything which has happened to man since those dim, prehistoric, unrecorded days when some one discovered the control of fire, invented the wheel, and devised the signs for language, master-

pieces of intelligence with which even the marvels of the last century cannot stand comparison. The men of the Constitution could as little have foreseen what the effects of steam and electricity would be as they could have anticipated the social and economic effects of these great inventions or the rapid seizure of the resources of nature through the advances of science and the vast fortunes and combinations of capital which have thus been engendered. Could they, however, with prophetic gaze have beheld in a mirror of the future all these new forces at work, so powerful as to affect the very environment of human life, even then they would not, I think, have altered materially the Constitution which they were slowly and painfully perfecting. They would have kept on their way, because they would have seen plainly what is now too often overlooked and misunderstood, that all the perplexing and difficult problems born of these inventions and of the changes, both social and economic, which have followed were subjects to be dealt with by laws as the questions arose, and laws and policies were not their business. They were not making laws to regulate or to affect either social or economic conditions. Their work was not only higher but far different. They were laying down certain great principles upon which a government was to be built and by which laws and policies were to be tested as gold is tested by a touchstone.

Upon the work in which they were engaged social and economic changes or alterations in international relations and political conditions, no matter how profound or unforeseen — and none could have been more profound or more unforeseen than those which have actually taken place — had little bearing or effect. They were framing a government, and human nature was the one great and controlling element in their problem. Human nature, with its strength and its weakness, its passions and emotions so often dominating its reason, its selfish desires and its nobler aspirations, was the same then as now. There is no factor so constant in human affairs as human nature itself, and in its essential attributes it is the same to-day as it was among the builders of the Pyramids. As to the principles of government which the framers of the Constitution wished to adapt to that portion of human nature which had gained a foothold on the North American continent there was little to be discovered. There is no greater fallacy than to suppose that new and fundamental principles of government are constantly to be invented and wrought out. Laws change and must change with the march of humanity across the centuries as it alteration finds in the conditions about it, but fundamental principles and theories of government are all extremely old. The very words in which we must express ourselves when we speak of forms of government are all ancient. Let me recall a

few facts which every schoolboy knows and which any one can obtain by indulging in that too much neglected exercise of examining a dictionary. Anarchy, for example, is the Greek word "rule," or "command," with the alpha privative in the form of "an" prefixed, and means the state of a people without government. Monarchy is the rule of one; oligarchy is the rule of a few. We cannot state what our own government is without using the word "democracy," which is merely the Greek word *Δημοκρατία*, and means popular government, or the rule of the people. Aristocracy, ideally as Aristotle had it, is the rule of the best, but even in those days it meant in practice the rule of the best-born or nobles. Plutocracy is the rule of the rich; autocracy, self-derived power — the unlimited authority of a single person. Ochlocracy is the rule of the multitude, for which we have tried to substitute the hideous compound "mobocracy." As with the words, so with the things of which the words are the symbol; the people who invented the one had already devised the other. The words all carry us back to Greece, and all these various forms of government were well known to the Greeks and had been analyzed and discussed by them with a brilliancy, a keenness, and an intellectual power which have never been surpassed. If you will read *The Republic* and *The Laws of Plato*, and supplement that study by an equally careful examination of what Aristotle has to

say on government, you will find that those great minds have not only influenced human thought from that time to this, but that there is little which they left unsaid. It is the fashion, for example, to speak of socialism as if it were something new, a radiant discovery of our own time which is to wipe away all tears. The truth is that it is very old, as old in essence as human nature, for it appeals to the strong desire in every man to get something for nothing, and to have someone else bear his burdens and do his work for him. As a system it is amply discussed by Plato, who, in *The Republic*, urges measures which go to great extremes in this direction. In the fourth century of our era a faction called the Circumcellions were active as socialists and caused great trouble within the weakening Empire of Rome. The real difficulty historically with the theories of socialism is not that they are new, but that they are very, very old, and wherever they have been put in practical operation on a large scale they have resulted in disorder, retrogression, and in the arrest of civilization and progress. Broadly stated, there have been only two marked additions to theories or principles of government since the days of the Greeks and the Romans. One is the representative principle developed by the people of England in the "Mother of Parliaments," and now spread all over the world, and the other is the system of federation on a large scale, embracing under a



central government of defined powers a union of sovereign and self-governing States, which the world owes in its bold and broad application to the men who met at Philadelphia to frame our Constitution in 1787.

With these exceptions the framers of the Constitution dealt with the theories and systems of government which have been considered, discussed, and experimented with for more than two thousand years, and which are to-day, a century later, the same as in 1787, unchanged and with no additions to their number. In order to reach the essence of what the makers of the Constitution tried and meant to do, which it is most important to know and reflect upon deeply before we seek to undo their work, let us begin by dismissing from our consideration all that is unessential or misleading. Let us lay aside first the word republic, for a republic denotes a form and not a principle. A republic may be democratic like ours, or an autocracy like that of Augustus Cæsar, or an oligarchy like Venice, or a changing tyranny like some of those visible in South America. The word has become as inaccurate, scientifically speaking, as the word monarchy, which may be in reality a democracy as in England or Norway, constitutional as in Italy, or a pure despotism as, until very lately, in Russia. Let us adhere in this discussion to the scientifically exact word "democracy." Next let us dismiss all that concerns the re-

lations of the States to the national government. Federation, as I have said, was the signal contribution of the Philadelphia convention to the science of government. The framers of the Constitution, if they did not invent the principle, applied it on such a scale and in such a way that it was practically a discovery, a venture both bold and new, as masterly as it was profoundly planned. With the love of precedents characteristic of their race they labored to find authority and example in such remote and alien arrangements as the Achean League and the Amphictyonic Council, but the failure of these precedents as such was the best evidence of the novelty and magnitude of their own design. Their work in this respect has passed through the ordeal of a great war; it has been and is to-day the subject of admiration and study on the part of foreign nations, and not even the most ardent reformer of this year of grace would think, in his efforts to restore popular government, of assailing the Union of sovereign States. Therefore we may pass by this great theme which was the heaviest part of the task of our ancestors.

In the same way we may dismiss, much as it troubled the men of 1787, all that relates to the machinery of government, such as the electoral college, the tenure of office, the methods of electing senators and representatives, and the like. These matters are important; many active thinkers in public life seek to change

them, not for the better, as I believe, but none the less these provisions concern only the mechanism of government; they do not go to the root of the matter, they do not affect the fundamental principles upon which the government rests.

By making these omissions we come now to the vital point, which is, What kind of a government did the makers of the Constitution intend to establish and how did they mean to have it work? They were, it must be remembered, preparing a scheme of government for a people peculiarly fitted to make any system of free institutions work well. The people of the United Colonies were homogeneous. They came in the main from Great Britain and Ireland, with the addition of the Dutch in New York, of some Germans from the Palatinate, and of a few French Huguenots whose ability and character were as high as their numbers were relatively small. But an overwhelming majority of the American people in 1787 were of English and Scotch descent and they, as well as the others from other lands, were deeply imbued with all those principles of law which were the bulwarks of English liberty. In this new land men had governed themselves and there was at that moment no people on earth so fit for or so experienced in self-government as the people of the Thirteen Colonies. Their colonial governments were representative and in essence democratic. They became entirely so when the Revolution ended and

the last English governor was withdrawn. In the four New England Colonies local government was in the hands of the town meetings, the purest democracies then or now extant, but it is best to remember, what the men of 1787 well knew, that these little democracies moved within fixed bounds determined by the laws of the States under which they had their being.

For such a people, of such a character, with such a past and such habits and traditions, only one kind of government was possible, and that was a democracy. The makers of the Constitution called their new government a republic and they were quite correct in doing so, for it was of necessity republican in form. But they knew that what they were establishing was a democracy. One has but to read the debates to see how constantly present that fact was to their minds. Democracy was then a very new thing in the modern world. As a system it had not been heard of, except in the fevered struggles of the Italian city republics, since the days of Rome and Greece, and although the convention knew perfectly well that they were establishing a democracy and that it was inevitable that they should do so, some of them regarded it with fear and all with a deep sense of responsibility and caution. The logical sequence as exhibited in history and as accepted by the best minds of the eighteenth century, struggling to give to men a larger freedom, was democracy — anarchy — despotism. The makers of the

Constitution were determined that so far as in them lay the American Republic should never take the second step, never revolve through the vicious circle which had culminated in empire in Rome, in the tyrants of the Grecian and the despots of the Italian cities which in their turn had succumbed to the absolutism of foreign rulers.

The vital question was how should this be done; how should they establish a democracy with a strong government — for after their experience of the Confederation they regarded a weak government with horror — and at the same time so arrange the government that it should be safe as well as strong and free from the peril of lapsing into an autocracy on the one hand, or into disorder and anarchy on the other? They did not try to set any barrier in the way of the popular will, but they sought to put effective obstacles in the path to sudden action which was impelled by popular passion, or popular whim, or by the excitement of the moment. They were the children of the “Great Rebellion” and the “Blessed Revolution” in the England of the seventeenth century and they were steeped in the doctrine of limiting the power of the king. But here they were dealing with a sovereign who could not be limited, for while a king can be restrained by transferring his power to the people, when the people are sovereign their powers cannot be transferred to anybody. There is no one to transfer them to, and if

they are taken away the democracy ceases to exist and another government, fundamentally different, takes its place.

The makers of the Constitution not only knew that the will of the people must be supreme, but they meant to make it so. That which they also aimed to do was to make sure that it was the real will of the people which ruled and not their momentary impulse, their well-considered desire and determination and not the passion of the hour, the child, perhaps, of excitement and mistake inflamed by selfish appeals and terrorized by false alarms. The main object, therefore, was to make it certain that there should be abundant time for discussion and consideration, that the public mind should be thoroughly and well informed, and that the movements of the machinery of government should not be so rapid as to cut off due deliberation. With this end in view they established with the utmost care a representative system with two chambers and an executive of large powers, including the right to veto bills. They also made the amendment of the Constitution a process at once slow and difficult, for they intended that it should be both, and indeed that it should be impracticable without a strong, determined, and lasting public sentiment in favor of change.

Finally, they established the Federal judiciary, and in the Supreme Court of the United States they made an addition to the science of government second only

in importance to their unequalled work in the development of the principle of federation. That great tribunal has become in the eyes of the world the most remarkable among the many remarkable solutions devised by the convention of 1787 for the settlement of the gravest governmental problems. John Marshall, with the intellect of the jurist and the genius of the statesman, saw the possibilities contained in the words which called the court into being. By his interpretation and that of his associates and their successors the Constitution attained to flexibility and escaped the rigidity which then and now is held up as the danger and the defect of a written instrument. In their hands the Constitution has been expanded to meet new conditions and new problems as they have arisen. In their hands also the Constitution has been the protection of the rights of States and of the rights of men, and laws which, in the opinion of the court, violated its principles and its provisions have been declared by judicial decision in specific cases to be unconstitutional.

By making the three branches of the government, the executive, the legislative, and the judicial, entirely separate and yet co-ordinate, and by establishing a representative system and creating a Supreme Court of extraordinary powers, the framers of the Constitution believed that they had made democracy not only all-powerful but at the same time safe, and that they

had secured it from gradual conversion into autocracy on the one hand and from destruction by too rapid motion and too quick response to the passions of the moment on the other. If ever men were justified by results they have been. The Constitution in its development and throughout our history has surpassed the hopes of its friends and utterly disappointed the predictions and the criticisms of its foes. Under it the United States has grown into the mighty Republic we see to-day. New States have come into the Union, vast territories have been acquired, population and wealth have increased to a degree which has amazed the world, and life, liberty, and property have been guarded beneath the flag which is at once the symbol of the country and of the Constitution under which the nation has risen to its high success. Such results would seem to be a potent argument in favor of the instrument of government through which they have been achieved. But to argue from results seems just now out of fashion. Actual accomplishment, it would appear, is nothing. According to the new dispensation our decision must be made on what is promised for the future, not on what has been done in the past. Under this novel doctrine, as I have observed it, we are to be guided chiefly by envy and discontent and are to act on the general principle that whatever is wrong.

What, then, is the plan by which popular government, which existed under the Constitution for more



than a century and which has been mysteriously lost during the past few years, is to be restored to us? It is proposed, to put it in a few words, to remove all the barriers which the makers of the instrument established in order to prevent rash, hasty, and passionate action and to secure deliberation, consideration, and due protection for the rights of minorities and of individuals. This is to be accomplished in two ways: by emasculating the representative system through the compulsory initiative and referendum and by breaking down the courts through the recall. These are the changes by which it is intended to revive popular government. Incidentally they strike at the very heart of the Constitution as the framers planned and made it, for they will convert the deliberate movement of the governmental machinery, by which its makers intended to secure to democracy both permanence and success, into an engine which starts at the touch of an electric button, which is as quick in response as a hair-trigger pistol and as rapid in operation as a self-cocking revolver. These new and precious ideas are of a ripe age; in fact they have passed many hundreds of years beyond the century fixed by Doctor Johnson for the establishment of a literary reputation at a point where it might be intelligently discussed. Let us therefore consider and criticise them.

The compulsory initiative and the compulsory referendum need not detain us long, for the effect of

those devices is obvious enough. The entire virtue or the entire vice — each of us may use the word he prefers — of these schemes rests in the word “compulsory.” The initiative without compulsion is complete in the right of petition secured by the first of the first ten amendments to the Constitution, which really constituted a bill of rights. The right of petition became the subject of bitter controversy at a later time and was vindicated once for all by John Quincy Adams’s great battle in its behalf, more than three-quarters of a century ago. There are few instances where petitions representing a genuine popular demand have not met a response in action, whether in Congress or in the State legislatures; still fewer where respectful attention and consideration have not been accorded to them. But the responsibility for action and the form such action should take has rested with the representative body. When the initiative is made compulsory a radical change is effected. A minority, sometimes a small minority, of the voters, always a small minority of the people, can compel the legislature to pass a law and submit it to the voters even when a very large majority of the people neither ask for nor, so far as the evidence goes, desire it. In this way all responsibility is taken from the representative body and they become mere clerks for drafting and recording laws, poor puppets who move mechanically when some irresponsible outsiders twitch the strings. It is the sub-

stitution of government by factions and fractions for government by the people. The representative body as hitherto constituted represented the whole people. Under the new plan it is to be merely the helpless instrument of a minority, perhaps a very small minority, of the voters.

The voluntary referendum has always existed in this country. In the national government, owing to our dual or federal form, the referendum on constitutional amendments is necessarily made to the States, and it has never been suggested for the laws of the United States, owing to both physical and constitutional difficulties. In the States the referendum has always been freely used, not only for constitutions and constitutional amendments but for laws, especially for city charters, local franchises, and the like. But if the referendum is made compulsory, on the demand of a minority of the voters, all responsibility vanishes from the representative body. The representative no longer seeks to represent the whole people or even his own constituency, but simply votes to refer everything to the voters, and covers himself completely by pointing to the compulsory referendum. On the other hand, the voters are called upon to legislate. Of the mass of measures submitted they know and can know nothing. Experience shows that in all referendums a large proportion of the voters decline to vote. Whether this is due to indifference or to lack of in-

formation the result is the same. It proves that this system demands from the voters what the most intelligent voters in the world are unable to give. They are required to pass upon laws, many of which they have neither time nor opportunity to understand, without deliberation and without any discussion except what they can gather from the campaign orator, who is, as a rule, interested in other matters, or from an occasional article in a newspaper. They cannot alter or amend. They must vote categorically "yes" or "no." The majority either fails to vote, and the small and interested minority carries its measure, or the majority, in disgust, votes down all measures submitted, good and bad alike, because they do not understand them and will not vote without knowing what their votes mean.

The great laws which, both in England and the United States, have been the landmarks of freedom and made ordered liberty possible were not passed and never could have been perfected and passed in such a way as this. This new plan is spoken of by its advocates as progressive. As a matter of fact, it is the reverse of progressive, it is reactionary. Direct legislation by popular vote was familiar, painfully familiar, to Greece and Rome. In both it led through corruption, violence, and disorder to autocracy and despotism. The direct-vote system also proved itself utterly incapable of the government of an extended

empire and of large populations. Where government by direct vote miserably failed, representative government, after all deductions have been made, has brilliantly succeeded. The development of the principle and practice of representative government was, as I have already pointed out, the one great contribution of modern times to the science of government. It has shown itself capable of preserving popular government and popular rights without the violence and corruption which resulted of old in anarchy and despotism, and at the same time it has proved its adaptability to the management of large populations and the efficient government of great empires. Representative government was an enormous advance over government by the direct vote of the forum, the agora, or the market-place, which had preceded it, and which had gone down in disaster. It is now proposed to abandon that great advance and to return to the ancient system with its dark record of disorder and failure. This is not progress. It is retreat and retrogression. It is the abandonment of a great advance and a return to that which is not only old and outworn, but which history and experience have alike discredited.

Look now for a moment at representative government as we ourselves have known it. Let us not forget, in the first place, that the Congress of the United States under the Constitution has been in continuous

existence for more than one hundred and twenty years; that with the single exception of the "Mother of Parliaments" it is much the oldest representative body of a constitutional character now existing in the world. Let us also remember that the history of the American Congress is in large part the history of the United States, and that we are apt to be proud of that history as a whole and of the many great things we as a people have accomplished. Yet whatever praise history accords to the Congress of the United States in the past the Congress of the moment and the members of that body in either branch receive but little commendation from their contemporaries. This is perhaps not unnatural, and it certainly has always been customary. Legislative bodies have rarely touched the popular imagination or appeared in a dramatic or picturesque attitude. The Conscript Fathers, facing in silence the oncoming barbarians of Gaul; Charles the First, attempting to arrest the five members; the Continental Congress adopting the Declaration of Independence; the famous Oath of the Tennis Court, are almost the only instances which readily occur to one's mind of representative and legislative bodies upon whom for a brief instant has rested the halo of heroism and from which comes a strong appeal to the imagination. The men who fight by land and sea rouse immediate popular enthusiasm, but a body of men engaged in legislation does not and cannot offer the

fascination or the attraction which are inseparable from the individual man who stands forth alone from the crowd in any great work of life, whether of war or peace.

We may accept without complaint this tendency of human nature, but I think every dispassionate student of history, as well as every man who has had a share in the work of legislation, may rightfully deprecate the indiscriminate censure and the consistent belittling which pursue legislative bodies. This attitude of mind is not confined to the United States. The press of England treats its Parliament severely enough, although, on the whole, with more respect than is the case with the American press in regard to the American Congress. But running through English novels and essays we find, as a rule, the same sneer at the representatives of the people as we do here. Very generally, both in this country and abroad, those who write for the public seem to start with the proposition that to be a member of Congress, or a member of Parliament, or a member of the Chamber of Deputies in France, implies some necessary inferiority of mind or character. I do not desire to be rash or violent, but I think this theory deserves a moment's examination and is, perhaps, open to some doubt. As Mr. Reed, when Speaker of the House, once said, it is a fair inference that a man who can impress himself upon two hundred thousand people, or upon the whole

population of a great State, sufficiently to induce them to send him to the House or Senate has something more than ordinary qualities and something more than ordinary force. Then, again, as Edmund Burke remarked, you cannot draw an indictment against a whole people, nor, I may add, can you draw an indictment against an entire class. There are good men and bad men in business and in the professions, in the ministry, in medicine, in law, and among scholars. Virtue is not determined by occupation. There are, I repeat, good and bad men in every profession and calling, among high and low, rich and poor, and the honest men who mean to do right largely preponderate, for if they did not the whole social structure would come crashing to the ground. What is true of business and the professions is true of Congress. There are good and bad men in public life, and the proportion of good to bad, I believe, compares favorably with that of any other occupation. Public men live in the fierce light which beats upon them as upon the throne, a light never fiercer or more pitiless than now, and for this reason their shortcomings are made more glaring and their virtues by contrast more shadowed than in private life. This is as it should be, for the man who does wrong in private life is far less harmful than the public servant who is false to his trust. To inflict upon the public servant who is a wrong-doer the severest reprobation is necessary for



the protection of the community, but for this very reason we should be extremely careful that no reprobation should be visited unjustly upon any public man. It is an evil thing to betray the public trust, but it is an equally evil thing to pour wholesale condemnation upon the head of every man in public life, good and bad alike. That which suffers most from an injustice like this in the long run is not the public servant who has been unfairly dealt with, for the individual passes quickly, but the country itself. After all, the voters make the representative. If he is not of the highest type, he appears to be that which the majority prefers. Wholesale criticism and abuse of the representatives reflect more on the constituencies, if we stop to consider, than on those whom the constituencies select to represent them. Indiscriminate condemnation and equally indiscriminate belittling of the men who make and execute our laws, whether in State or nation, is not only a reflection upon the American people but is a blow to the United States and every State in it. They help the guilty to escape and injure the honest and the innocent. They destroy the people's confidence in their own government and lower the country in the eyes of foreign nations.

The Congress of the United States embodies the representative principle. The principle of representation, I repeat, has been the great contribution of the English-speaking race to the science and practice of

government. The Greeks and the Romans, let me say once more, had pure democracy and legislation by direct vote in theory, at least, and we have but to read Plato's Republic and The Laws to learn the defects of the system in use in Athens. Greece failed to establish an empire; she touched the highest peaks of civilization, and finally went to pieces politically beneath the onset of Rome. Rome established a great empire, but, after years of bloody struggles between aristocracy and democracy, it ended in a simple despotism. The free cities of Italy oscillated between anarchy and tyranny, only to fall victims in the end to foreign masters. In Florence they had elections every three months and a complication of committees and councils to interpret the popular will. Yet the result was the Medicis and the Hapsburgs.

It is also to be remembered that the representative principle has been coincident with political liberty. Whatever its shortcomings or defects, and, like all things human, it has its grave defects, it none the less remains true that the first care of every "strong man," every "saviour of society," every "man on horseback," of every autocrat, is either to paralyze or to destroy the representative principle. It may be that the representative principle is not the cause of political liberty, but there can be no question whatever that the two have always gone hand in hand, and that the destruction of one has been the signal for the downfall of the

other. The Congress of the United States and the legislatures of the several States embody the representative principle. By that principle your laws have been made and the republican form of government sustained for more than a century. Whatever its shortcomings, it has maintained the government of the United States and upheld law and order throughout our borders.

The framers of our government separated the executive from the legislative branch. They deemed both essential to freedom. The constitution of my State of Massachusetts declares that the government it establishes is to be a government of laws and not of men; a noble principle and one worthy of fresh remembrance. With such a history, and typifying as it does the great doctrines which were embodied in the Declaration of Independence, the Constitution of the United States, and the institutions of England, it may fairly be asked that if the representative principle must be criticised, as it should be, with severity when it errs, it should also be treated with that absolute justice which is not only right in the abstract but which is essential to the maintenance of law, order, and free government, to human progress and to the protection of the weak, even as the fathers designed that it should be. When we blame its failures let us not forget its services. They have broadened freedom down from precedent to precedent. They shine across those pages of history

which tell the great story of the advance of liberty and of the ever-widening humanity which seeks to make the world better and happier for those who most need happiness and well-being. In beneficent results for the people at large no other form of government ever attempted can compare with it for a moment.

The worst feature of the compulsory initiative and referendum lies therefore in the destruction of the principle of representation. Power without responsibility is a menace to freedom and good government. Responsibility without power is inconceivable, for no man in his senses would bear such a burden. But when responsibility and power are both taken away, whether from the executive or the representatives, the result is simple inanition. No man fit by ability and character to be a representative would accept the office under such humiliating conditions. Those who accepted it would do so for the pecuniary reward which the office carried and would sink rapidly into mere machines of record, neither knowing nor caring what they did. With a representative body thus reduced to nothingness we are left with the people, armed only with their votes, and with an executive who has necessarily absorbed all the real powers of the State. This situation is an old story and has always ended in the same way. It presents one of those rare cases in which the teaching of history is uniform. When the representative principle has departed and only its ghost

remains to haunt the capitol, liberty has not lingered long beside its grave. The rise of the representative principle and its spread to new lands to-day marks the rise of popular government everywhere. Wherever it has been betrayed or cast down the government has reverted to despotism. When representative government has perished freedom has not long survived.

Most serious, most fatal indeed are the dangers threatened by the insidious and revolutionary changes which it is proposed to make in our representative system, upon which the makers of the Constitution relied as one of the great buttresses of the political fabric which was to insure to popular government success and stability. Yet even these changes are less ruinous to the body politic, to liberty and order, than that which proposes to subject judges to the recall. No graver question than this has ever confronted the American people.

The men who framed the Constitution were much nearer to the time when there was no such thing as an independent judiciary than we are now. The bad old days, when judges did the bidding of the king, were much more vivid to them than to us. What is a commonplace to us was to them a comparatively recent and a hardly won triumph. The fathers of some of those men—the grandfathers of all—could recall Jeffreys and the “Bloody Assize.” They knew well that there could be no real freedom, no security for

personal liberty, no justice, without independent judges. It was for this reason that they established the judiciary of the United States with a tenure which was to last during good behavior and made them irremovable except by impeachment. The Supreme Court then created and the judiciary which followed have, as I have already said, excited the admiration of the civilized world. The makers of the Constitution believed that there should be no power capable of deflecting a judge from the declaration of his honest belief, no threat of personal loss, no promise of future emolument, which could be held over him in order to sway his opinion. This conviction was ingrained and born with them, as natural to them as the air they breathed, as vital as their personal honor. How could it have been otherwise? The independence of the judiciary is one of the great landmarks in the long struggle which resulted in the political and personal freedom of the English-speaking people. The battle was fought out on English soil. If you will turn to the closing scenes of Henry IV, you will find there one of the noblest conceptions of the judicial office in the olden time ever expressed in literature. It was written in the days of the last Tudor or of the first Stuart, in the time of the Star Chamber, of judges who decided at the pleasure of the king, and when Francis Bacon, Lord Chancellor of England, took bribes or gifts. Yet lofty as is the conception, you will see that Shake-

speare regarded the judges as embodying the person, the will, and the authority of the king.

We all know how the first two Stuarts used the courts to punish their enemies and to prevent the assertion of political rights, which are now such commonplaces that the fact that they were ever questioned is forgotten. The tyranny of the courts was one of the chief causes which led to the great rebellion, and out of that great rebellion, when the third Stuart had been restored, came the habeas corpus act, which has done more to protect personal liberty than any act ever passed. But the second Charles and the second James had learned nothing as to the judges. They expected them to do their bidding when the king had any interest at stake, and under the last Stuart the courts reached a very low point and the legal history of the time is characterized by the evil name of Jeffreys. When the lawyers went to pay their homage to William of Orange, they were headed by Sergeant Maynard, then ninety years of age. "Mr. Sergeant," said the prince, "you must have survived all the lawyers of your standing." "Yes, sir," said the old man, "and, but for Your Highness, I should have survived the laws too." The condition of the courts was indeed one of the strongest of the many bitter grievances which wrought the Revolution that placed William of Orange on the English throne. In the famous bill of rights there is no provision in regard to

the courts and it is not quite clear why it was omitted, although, apparently, it was due to an oversight. In any event it was not forgotten. It was brought forward more than once in Parliament, but William announced that he would not assent to any act making the judges independent of the crown. As his reign drew toward its close, however, he signified that although he would veto a separate act he would accept the independence of the judiciary if provided for in the act of settlement which was to determine the succession to the throne of England. Therefore we find in the act of settlement the clause which declares that the judges shall hold office during good behavior — “*quamdiu se bene gesserint*” — and shall be removable only on the request of both houses of Parliament.

It is necessary to pause a moment here and consider briefly the provision of the act of settlement for the removal of judges on an address by the houses, because it has been most incorrectly used by persons ignorant probably of its history as a precedent justifying the recall. The clause was inserted not for the purpose of controlling the judges, but to protect them still further against the power of the crown by which they had hitherto been dominated. The history of the clause since its enactment demonstrates what its purpose was as well as the fulfilment of that purpose in practice. During the two centuries which have elapsed since William III gave his assent to the act, there has



been, so far as I can learn, only one removal on address, that of Sir Jonah Barrington, an Irish judge, in 1806, more than a hundred years ago. There have been several cases where removal was petitioned for, but Barrington's was, I think, the only one in which the demand was successful. The procedure employed shows that there is no resemblance whatever between the removal of a judge upon the address of the law-making body and the popular recall. They are utterly different, are instituted for different purposes, and the former furnishes in reality a strong argument against the latter. In all the cases of removal or attempted removal by address of Parliament the accused judge was carefully tried before a special committee of each house; he could be heard at the bar of either house, he could and did employ counsel, and could summon and cross-examine witnesses. This process is as far removed from the recall as the zenith from the nadir, for under the recall by the voters the accused judge has no opportunity to summon or cross-examine witnesses, to appear by counsel, or to be properly heard and tried. He is obliged under the system of the popular recall to make an appeal by the usual political methods and at the same time to withstand another candidate, while he is forced to seek a hearing from audiences ignorant of the law and inflamed perhaps against him by passion and prejudice. He has no chance whatever of a fair trial.

Some of our States borrowed this provision of the act of settlement when they formed their constitutions. My own State of Massachusetts was one of them. The power has been but rarely exercised by the legislature in the hundred and thirty years which have passed since our constitution was adopted, but it so happened that when I was in the legislature a case occurred, and I was a member of the committee on the judiciary to whom the petitions were referred. The accused judge was tried as elaborately and fairly as he could have been by any court or by the Senate if he had been impeached. He had counsel, he summoned and cross-examined witnesses, and the trial, for it was nothing less, occupied weeks. The House adopted the address but it was defeated in the Senate. A year later, after a similar trial, the address passed both houses and the judge was removed by the governor for misdemeanors and malfeasance in office. A mere statement of the procedure shows at once that the removal by address is simply a summary form of impeachment with no relation or likeness to the recall. Removal by address is no more like the recall than impeachment is. If successful, they all result in the retirement of the judge accused, but there the resemblance ends. The makers of the Constitution did not follow the act of settlement and adopt the removal on address. They no doubt perceived its advantages, because it made possible the removal of a judge in-

capacitated by insanity, or age, or disease without inflicting upon him the stigma of an impeachment, but they also saw that the removal by address might be used for political and personal reasons, of which one instance occurred in my own State, and they probably determined that the risk of its abuse outweighed any possible benefit which might flow from its judicious exercise.

They placed their courts as far as they could on the great heights of justice, above the gusts of popular passion. They guarded them in every possible way. They knew that judges were human and therefore fallible. They knew that the courts would move more slowly than popular opinion or than Congress, but they felt equally sure that they would in the end follow that public opinion which was at once settled and well considered. All this they did because all history and especially the history and tradition of their own race taught them that the strongest bulwark of individual freedom and of human rights was to be found ultimately in an independent court, the corner-stone of all liberty. Their ancestors had saved the judges from the crown. They would not retrace their steps and make them subject to the anger or the whim of any one else.

“They wished men to be free,  
As much from mobs as kings, from you as me.”

The problem which they then solved has in no wise changed. The independence of the judiciary is as vital to free institutions now as then. The system which our forefathers adopted has worked admirably and has commanded the applause of their children and of foreign nations, who Bacon tells us are a present posterity. Now it is proposed to tear this all down and to replace the decisions of the court with the judgment of the market-place. If I may borrow a phrase from the brilliant speech made recently by Mr. Littleton in the House, it is intended to substitute "government by tumult for government by law."

Those who advocate this revolution in our system of government seem to think that a judge should be made responsive to the popular will, to the fleeting majority of one day which may be a minority the next. They would make their judges servile, and servile judges are a menace to freedom, no matter to whom their servitude is due. They talk of a judge's duty to his constituents. A judge on the bench has no constituents and represents no one. He is there to administer justice. He is there not to make laws, but to decide what the law is. He must know neither friend nor foe. He is there to declare the law and to do justice between man and man.

The advocates of the recall seem to believe that with subservient judges glancing timidly to right and left to learn what voters think, instead of looking stead-

fastly at the tables of the law, the poor will profit and the rich will suffer; that the individual will win and the corporation lose; that the powerful will be crushed and the weak will triumph, while the sword of the recall hangs over the head of the judicial Damocles. If even this were true, nothing could be more fatal. A judge must know neither rich nor poor, neither strong nor weak. He must know only law and justice. He must never listen to Bassanio's appeal, "To do a great right, do a little wrong." But the theory is in reality most lamentably false. No man fit to be a judge would, with few exceptions, take office under the recall. In the end the bench would be filled by the weak and the unscrupulous. The weak would make decisions to curry favor and hold votes. The unscrupulous would use their brief opportunity to assure their own fortunes, and that assurance could come only from the rich and the powerful, who would thus control the decisions. For the American court we should substitute the oriental *cadi*, with the bribe-giver whispering in his ear. If a criminal happened to belong to some large and powerful organization in whose interest the crime was committed he would have little to fear from a court where a judge subject to the recall presided. We should have courts like those ruled by the *Camorra* in the days of the Neapolitan Bourbons except that the subservience of the judge would be insured by fear of the recall instead of by dread of assassination. The

result would be the same and certain criminals would become a privileged class and commit their crimes with impunity.

In one of the noblest passages of his letter to the sheriffs of Bristol Edmund Burke says:

The poorest being that crawls on earth contending to save itself from injustice and oppression is an object respectable in the eyes of God and man.

Without the independent judge those words could never have been written, for before the independent judge alone could the poorest hope to contend against injustice. Judges, of course, are human and therefore err. I know well that there have been one or two great cases where the decision of the highest court travelling beyond its province has been reversed and swept away by the overwhelming force of public opinion and the irresistible current of events. I know only too well that we suffer from the abuse of technicalities, from delays which are often a denial of justice, and that the methods of our criminal law are in many States a disgrace to civilization. But all these delays and abuses and miscarriages of justice are within the reach of Congress and legislatures, and these evils can be remedied by statute whenever public opinion demands a reform. Their continued existence is our own fault. Yet when all is said the errors of the highest courts are few and the abuses and shortcomings to which I have

referred can be cured by our own action. In the great mass of business, in the hundreds of trials which go on day by day and year by year, justice is done and the rights of all protected. We may declare with truth that in the courts, as we have known them, the poor, the weak, the helpless have found protection and sometimes their only defence. A mob might thunder at the gates, money might exert its utmost power, but there in the courtroom the judge could see only the law and justice. The safeguard of the rights and liberties of minorities and individuals, of the weak, and above all of the unpopular, as a rule, has been found only in the court. And now it is proposed to undo all this and to make the judges immediately dependent on the will of those upon whom they must pass judgment. If the framers of the Constitution were alive to-day, they would not find a single new condition to affect their faith in an independent judiciary. They would decide now as they decided then. Are we ready to reverse their judgment and open the door to the flood of evils which will rush into the State as they always have rushed in when in times past the courts were controlled by an outside power?

The destruction of an independent judiciary carries with it everything else, but it only illustrates sharply the general theory pursued by the makers of the Constitution. They established a democracy, and they believed that a democracy would be successful; but

they also believed that it could succeed solely through forms and methods which would not make it impossible for the people to carry on their own government. For this reason it was that they provided against hasty action, guarded against passion and excitement, gave ample room for the cooler second thought, and arranged that the popular will should be expressed through representative and deliberative assemblies and the laws administered and interpreted through independent courts. Those who would destroy their work talk continually about trusting the people and obeying the people's will. But this is not what they seek. The statement, as they make it, is utterly misleading. That for which they really strive is to make the courts and the Congress suddenly and rapidly responsive to the will of a majority of the voters. It matters not that it may be a narrow, an ephemeral, or a fluctuating majority. To that temporary majority, which the next year may be changed to a minority, the Congress and the courts must at once respond. Legislation of the most radical, the most revolutionary character may thus be forced upon the country, not only without popular assent but against the will of the great mass of the people.

The framers of the Constitution made it in the name and for the benefit of the people of the United States; for the entire people, not for any fraction or class of the people. They did not make the Constitution for



the voters of the United States. They recognized that the popular will could only be expressed by those who voted and that the expression of the majority must in the end be final. But they restrained and made deliberate the action of the voters by the limitations placed upon the legislative, the executive, and the judicial branches, so that the rights of all the people might be guarded and protected against ill-considered action on the part of those who vote. Those who now seek to alter the fundamental principles of the Constitution start with a confusion of terms and a false proposition. They talk glibly of "the people." But they mean the voters, and the voters are not the people, but a small portion of the people, not more than a fifth or a sixth part, who are endowed by law with the power to express what is to be regarded as the popular will. The legal voters are the representatives and trustees of all the inhabitants of the country, of all those under twenty-one to whom the future belongs, of nearly all the women, of all resident aliens, and of all persons not qualified to vote. They are the instrument, the only practicable instrument, for reaching an expression of the popular will; but they are not the people as a whole, for whom and for whose protection the Constitution was made. It was for the protection of the people that the makers of the Constitution made provisions to assure deliberate movement and to prevent hasty, passionate, or ill-considered action. The

purpose of those who would destroy the present Constitution is to remove these safeguards and for the "people" of the Constitution substitute, without check, hindrance, or delay, the will of the voters of the moment. They are blind to the awful peril of turning human nature loose to riot among first principles.

But they do not stop even there. Under the system they propose a small minority of the voters, who are themselves a minority of the people, are to have unlimited power to compel the passage of laws. A small minority will be able and, as the experience of the voluntary referendum shows, will in almost every instance contrive to place laws upon the statute-book which the mass of the people really do not desire. A small minority can force the recall of a judge and drive him from the bench. The new system places the actual power in the hands of minorities, generally small, always interested and determined. Instead of government "by the people and for the people" we shall have government by factions, with all the turbulence, disorder, and uncertainty that the rule of factions ever implies. Such a system is a travesty of popular government and the antipodes of true democracy. Under the same conditions of human nature, with no element of decision lacking then that we have now, the framers of the Constitution established the system under which we have flourished and rejected that which it is now proposed to set up and which all

experience has shown to be a failure. Their system embodied in the Constitution has proved its efficacy. It has worked well and it has been an extraordinary success. The other, burdened with the failures of centuries, has always trodden the same path which revolves in the well-worn vicious circle from democracy to anarchy, from anarchy to despotism, and then by slow and painful steps back to the high levels of an intelligent freedom and an ordered liberty. Our ancestors sought to make it as impossible as human ingenuity could devise to drag democracy down by the pretence of giving it a larger scope. We are asked to retrace our steps, adopt what they rejected, take up that which has failed, cast down that which has triumphed, and for government by the people substitute the rule of factions led by the eternal and unwearied champions who in the name of the people seek the promotion which they lack.

Such are the questions which confront us to-day, amazing in their existence under a Constitution with such a history as ours. The evils which it is sought to remedy are all, so far as they actually exist, curable by law. No doubt evils exist; no doubt advance, reform, progress, improvements are always needed as conditions change, but they can all be attained by law. There is no need to destroy the Constitution, to wreck the fundamental principles of democracy and of the Bill of Rights embodied in the first ten amendments, in

order to attain to an amelioration of conditions and to a wider and more beneficent social state when statutes can effect all and more than is demanded. It is not necessary to scuttle a noble ship in order to rid her of rats; it is not imperative to burn the strong, well-timbered house which has sheltered successive generations because there is a leak in the roof; it is only a madman who would hurl down in blackened ruin a noble palace, the work and care of centuries, because a stain easily erased may now and then be detected upon the shining whiteness of its marble walls.

All these questions, all these reforms and revolutions so gloriously portrayed to us, it cannot be said too often, are very old. Their weakness is not that they are new but that they are timeworn and outworn. The voices which are now crying so shrilly that we must destroy our Constitution and abandon all our principles of government have been heard —

“In ancient days by Emperor and clown.”

They are as old as human discontent and human impatience and are as ancient as the flattery which has followed sovereign authority from the days of the Pharaohs to our own.

There is a familiar story, which we all heard as children, of the courtiers of Knut, King of England, a mighty warrior and a wise man, not destitute evidently of humor. These courtiers told the King that the

tide would not dare to come in against his command and wet his feet. So he bade them place his chair near the edge of the sea and the main came silent, flooding in about him, and you all remember the lesson which the King read to his flatterers. Many kings have come and gone since then, and those who still remain, now for the most part walk in fetters. But the courtier is eternal and unchanged. He fawned on Pharaoh and Cæsar and from their day to our own has always been the worst enemy of those he flattered. He and his fellows contended bitterly in France for the privilege of holding the king's shirt, and when the storm broke which they had done so much to conjure up, with few exceptions they turned like cravens and fled. New courtiers took the vacant places. They called themselves friends of the people, but their character was unaltered. They flattered the mob of the Paris streets, shrieking in the galleries of the Convention, with a baseness and a falsehood surpassing even those of their predecessors who had cringed around the throne. Where there is a sovereign there will be courtiers, and too often the sovereign has listened to the courtiers and turned his back on the loyal friends who were ready to die for him but would not lie to him. Too often has the sovereign forgotten that, in the words of one of the most penetrating and most brilliant of modern English essayists, "a gloomy truth is a better companion through life than a cheerful

falsehood." Across the centuries come those dangerous and insidious voices and they sound as loudly now and are as false now as ever. They are always at hand to tell the sovereign that at his feet the tide will cease to ebb and flow, that the laws of nature and economic laws alike will at his bidding turn gently and do his will. And the tides move on and the waves rise and the sovereign who has listened to the false and selfish voices is submerged in the waste of waters, while the courtiers have rushed back to safety and from the heights above are already shouting, "The king is dead! Long live the king!"

I have a deep reverence for the great men who fought the Revolution and made the Constitution, but I repeat that I as little think that all wisdom died with them as I do that all wisdom was born yesterday. When they dealt with elemental questions and fundamental principles, the same yesterday, to-day, and forever in human history, I follow them because they have proved their wisdom by their success. I am not ready to say with Donne:

We are scarce our father's shadow cast at noon;

but I am more than ready—I profoundly believe that we should cherish in our heart of hearts the noble and familiar words of the wise son of Sirach:

Let us now praise famous men and our fathers that begat us.  
The Lord hath wrought great glory by them through his great

power from the beginning. Leaders of the people by their counsels and by their knowledge of learning meet for the people; wise and eloquent in their instructions; all these were honored in their generations and were the glory of their times.

There be of them, that have left a name behind them, that their praises might be reported. And some there be which have no memorial; who are perished as though they had never been; and are become as though they had never been born; and their children after them. But these were merciful men whose righteousness hath not been forgotten. With their seed shall continually remain a good inheritance and their children are within the covenant.

Their seed standeth fast and their children for their sakes. Their seed shall remain forever and their glory shall not be blotted out. Their bodies are buried in peace; but their name liveth forevermore. The people will tell of their wisdom and the congregation will show forth their praise.

## THE COMPULSORY INITIATIVE AND REFER- ENDUM, AND THE RECALL OF JUDGES <sup>1</sup>

IN discussing a subject so momentous as the principles of government it is of great importance to determine at the outset exactly what we mean by the terms we use. Nothing is more dangerous, when we are trying through inquiry to arrive at direct results, than to be the slaves of words or phrases. We all believe in liberty, for instance, and desire to promote it, but explanatory words are needed, for the liberty we mean, and the only liberty worth having, is an ordered freedom and not the license which knows no law. The word "progress" has been much used of late in public discussion, but mere progress is not necessarily good. Everything depends on the direction in which the progress is made. We speak, for example, of the progress of a disease, which is a most undesirable progress either in a human being or in a body politic. Progress is our aim and purpose only when it means an advance from bad to good, from good to better, or from better to best. The word "people," again, in connection with the constitutional

<sup>1</sup> An address delivered at Princeton University March 8, 1912. I have omitted from this address those portions which were merely repetitions of arguments contained in the two preceding addresses.



changes which have been advocated for the last few years, is also used in a misleading manner. The "people" referred to in the Constitution means all the people of the United States. "People" as referred to in popular discussion by those who favor radical alterations in our Constitution invariably means a majority of the voters, which is a totally different thing from the people. It is quite true that the voters are the channel through which we necessarily obtain an expression of the popular will, but a majority of the voters are not necessarily the people and do not at all times represent the real wishes of the people.

The majority of those who vote on any given question may be a very narrow one. It may be a very ephemeral one. The majority of one year may be the minority of the next, and yet you will observe that in all the practical arrangements for the compulsory initiative and referendum and for the recall of judges, the people who can compel the initiative and who in practice carry the referendum, the number who can force a recall and who, in its practical operation, may be able to carry it, are but a small minority of the voters. To start the initiative or the recall, in all the provisions that I have seen, only a minority, sometimes a very small percentage, of those who voted at the last election is required. When the act asked for has been adopted by the legislature and referred, it appears, if experience is of any value, that a large proportion of

the voters express no opinion, either from indifference or from not comprehending the question, while the small and interested minority take pains to vote for the law, the submission of which to the voters has been compelled by their original action. The result is that laws are placed upon the statute-book without any sufficient evidence that they are there — I will not say by the will of the people, but even by the will of the majority of the registered voters. A small minority of the voters would be generally effective under these methods, and of course a small minority of the voters is a still smaller minority of the people, for the voters themselves are a comparatively small minority of the whole people. Therefore it is important to bear in mind that when it is proposed to make the government more directly a government of the people, what is intended is to make the government more quickly responsive to and more absolutely under the control of the majority of the voters, whether that majority is large or small. Also it is to be remembered that this will result in the destruction of representative government, about which I shall have something to say later on, and it is the substitution of the will of a portion of the voters for the will of all the voters who are now represented by the legislative bodies. I cannot express my meaning better than by quoting from a distinguished ex-president of this university,<sup>1</sup> who says

<sup>1</sup> President Wilson.

in his book on Constitutional Government, published in 1908:

There are many evidences that we are losing confidence in our State legislatures, and yet it is evident that it is through them that we attempt all the more intimate measures of self-government. To lose faith in them is to lose faith in our very system of government, and that is a very serious matter. It is this loss of confidence in our legislatures that has led our people to give so much heed to the radical suggestions of change made by those who advocate the use of the initiative and the referendum in our processes of legislation, *the virtual abandonment of the representative principle*, and the attempt to put into the hands of the voters themselves the power to initiate and negative laws, in order to enable them to do for themselves what they have not been able to get satisfactorily done through the representatives they have hitherto chosen to act for them.

In the same way, when we come to the consideration of the Constitution upon which I am to have the honor to speak to you to-night, it is important to know just what we mean by a "constitution." A constitution in its proper significance, as I understand it, is a declaration of certain broad principles upon which government must be based and by which laws are to be tested. The people with great deliberation agree upon these general principles, submitted to them by men capable of defining and formulating them, and then they are adopted by the voters after long consideration and debate. They are not put beyond the possibility of change, as we are told was the case with

the laws of Lycurgus, but change or amendment of the instrument are provided for under conditions which not only make alteration difficult but which are framed to secure as nearly as possible the expression of the will of an overwhelming majority of the voters who represent the people. Laws which are subsequently passed by the legislative bodies called into being by the Constitution are to be tested and tried by the general principles which the people have established as the foundation of all government. In this country we have fallen into the bad habit in most of the States of placing in constitutions provisions which should be the subject of laws and statutes and which have no relation to general principles. The effect of this has been extremely unfortunate, for it has caused a widespread feeling that constitutions do not differ from laws; that they may deal with any subject and be the receptacle of any ideas which at the moment happen to be popular. This involves not only a complete misapprehension of the true purposes of the Constitution, but tends to destroy the sanctity which an instrument embodying great general principles of government ought always to possess. I cannot put the point which I have been trying to make better than by quoting again the former distinguished president of this university. In a work entitled *The State*, in section 896, dealing with this habit of regarding the Constitution as if it was an ordinary law, Mr. Wilson says:

The objections to the practice are as obvious as they are weighty. General outlines of organization, such as the Constitution of the United States contains, may be made to stand without essential alteration for long periods together, but in proportion as constitutions make provision for interests whose aspects must change from time to time with changing circumstances they enter the domain of such law as must be subject to constant modification and adaptation. Not only must the distinctions between constitutional and ordinary law hitherto recognized and valued tend to be fatally obscured, but the much to be desired stability of constitutional provisions must in great part be sacrificed. Those constitutions which contain the largest amount of extraneous matter, which does not concern at all the structure or functions of government, but only private or particular interests, must, of course, however carefully drawn, prove subject to most frequent change. In some of our States, accordingly, constitutions have been as often changed as important statutes. The danger is that constitution making will become with us only a cumbrous mode of legislation.

The Constitution of the United States, which Mr. Wilson cites, is a true representative of what a constitution should be. It contains only general principles, with provisions for the machinery necessary to carry on the government based on those general principles. The first ten Amendments to the Constitution, adopted immediately after its ratification by the required number of States, are in reality a bill of rights and were placed there as the famous bill of rights was placed in the statute-book of England and as the bill of rights was placed in the Constitution of 1780 of Massachusetts, a constitution which still endures, with

the view of protecting the rights of the individual man and of the minority against the possible tyranny of the majority. Lord Acton, in his *History of Freedom*, in one of the essays on liberty, says:

The most certain test by which we judge whether a country is really free is the amount of security enjoyed by minorities.

The Constitution of the United States, with its first ten Amendments, meets that severe test more successfully, I believe, than any constitution ever framed by man. Let me quote once more the same eminent authority as to what we accomplished in America when we framed the Constitution of the United States.

American independence was the beginning of a new era, not merely as a revival of the Revolution, but because no other revolution ever proceeded from so slight a cause or was ever conducted with so much moderation. The European monarchies supported it. The greatest statesmen in England averred that it was just. It established a pure democracy, but it was democracy in its highest perfection, armed and vigilant, less against aristocracy and monarchy than against its own weakness and excess. Whilst England was admired for the safeguards with which, in the course of many centuries, it had fortified liberty against the power of the crown, America appeared still more worthy of admiration for the safeguards which, in the deliberations of a single memorable year, it had set up against the power of its own sovereign people. It resembled no other known democracy, for it respected freedom, authority, and law. It resembled no other constitution, for it was contained in half a dozen intelligible articles. Ancient Europe opened its mind to two new ideas — that revolution

with very little provocation may be just and that democracy in very large dimensions may be safe.

No greater tribute than this has ever been paid to the Constitution of the United States, and it is all stated with the precision and the weight of a profound student of human history. What he says of our Constitution follows an essay upon "Freedom in Antiquity," in which he sketches the rise and fall of Athenian democracy, the gradual departure from the laws of Solon, the development of legislation by direct popular vote, and the removal of all limitations upon the power and action of the majority. Let me read to you the words in which Lord Acton sums up the result:

The philosophy that was then in the ascendant taught them that there is no law superior to that of the State — the lawgiver is above the law.

It followed that the sovereign people had a right to do whatever was within its power, and was bound by no rule of right or wrong but its own judgment of expediency. On a memorable occasion the assembled Athenians declared it monstrous that they should be prevented from doing whatever they chose. No force that existed could restrain them; and they resolved that no duty should restrain them, and that they would be bound by no laws that were not of their own making. In this way the emancipated people of Athens became a tyrant; and their government, the pioneer of European freedom, stands condemned with a terrible unanimity by all the wisest of the ancients. They ruined their city by attempting to conduct war by debate in the market place. Like the French Republic, they put their unsuccessful commanders to death. They

treated their dependencies with such injustice that they lost their maritime empire. They plundered the rich until the rich conspired with the public enemy, and they crowned their guilt by the martyrdom of Socrates.

When the absolute sway of numbers had endured for near a quarter of a century, nothing but bare existence was left for the State to lose; and the Athenians, wearied and despondent, confessed the true cause of their ruin. . . . The repentance of the Athenians came too late to save the Republic. But the lesson of their experience endures for all times, for it teaches that government by the whole people, being the government of the most numerous and most powerful class, is an evil of the same nature as unmixed monarchy, and requires, for nearly the same reasons, institutions that shall protect it against itself, and shall uphold the permanent reign of law against arbitrary revolutions of opinion.

My purpose in citing this passage from Lord Acton is not to remind you of the failure of Athenian democracy, but to call to your attention, what it is of the utmost importance to remember in the discussion in which we are engaged, and that is that the propositions now offered for changing our system of government and our Constitution are all very old. Legislation by direct popular vote was familiar to the Athenians and you have but to read *The Republic* and the *Laws* of Plato and the *Politics* of Aristotle to find out that there are scarcely any ideas in regard to government which were not developed and discussed by the Greeks, men of perhaps the highest intelligence which the world has ever seen. In the same way, legislation



by direct popular vote coupled with the veto of the tribunes of the people, was practised in Rome, and the outcome is familiar to all the world. The result was the despotism of the Cæsars. The one great contribution of modern times to the science of government has been the representative system. There were hesitating steps taken in that direction during the Middle Ages, but the real development of the representative principle was effected in England and has been the glory of the English-speaking race. Representative government, in other words, stood for a great advance over the democratic systems of Greece and Rome and of the mediæval Italian cities. I am not now concerned to show from history which system was the more successful. I merely desire at this point to call your attention to the fact that, while it might be better or worse to adopt legislation by direct vote as a substitute for representative government, there can be no question whatever that to abandon representative government and take up in its place legislation by direct vote is to return from a high stage of evolution to a lower and more primitive one. The life of the amœba may be a better life and a more enviable one than that of the elephant, for example, but there can be no question that the amœba is a lower stage in the scale of evolution than is the elephant.

There is therefore nothing new in these propositions as to legislation by direct vote, and if we examine the

scheme for the recall of judges we shall see that there is nothing novel in that idea either, for not only has control of the courts by the sovereign authority been familiar at all stages of history, but the actual practice of judicial recall was attempted in France during the Revolution of 1848. The provisional government made the judges removable at pleasure, and if you will take the trouble to read the manifestoes issued by Ledru-Rollin you will see how he asks the voters to let him know if any judge does not behave in accordance with their wishes, so that he may remove the peccant magistrate, and he further calls attention to the fact that the judges are on the bench simply to do the popular will. They had also, at the time of that Revolution in 1848, not only this control of the judges under the provisional government, but also the "mandat impératif" and government workshops. I will only pause long enough to say that the result of those experiments in France was the plebiscite and the Third Napoleon. Representative government and liberty faded away together and the executive became all-powerful. Therefore I repeat that in these propositions now made to us there is nothing new. They are old propositions. We are to-day asked to lay aside the great advance in government made, as history shows, by the representative system and return to earlier forms.

Let us first consider the compulsory initiative and

referendum in their practical working. One of the great arguments used by the advocates of these changes in our Constitution is that by obtaining the direct action of the voters we shall be free from the demoralizing influence and from the control of money in politics and in our legislatures. In the alterations, so generally made of late in our election laws in order to compel nominations to be made in popular primaries, we have an opportunity to test the claim which has been advanced in favor of these reforms, that we should thereby rid ourselves of the influence of money. The method of choosing executive officers or members of the legislature is an alteration only in the mechanism of government, although I personally think that many of these changes are and have proved to be injurious and not beneficial. But none the less these primary systems afford us, as I have just said, an excellent opportunity of testing the question of the use of money under a system of direct popular action. I have always believed theoretically that the more elections and elective offices were multiplied, and the more elaborate the machinery for selecting and electing candidates, the larger the field for professional politicians and for the employment of money to control election results. The evidence afforded by the primary system in actual operation seems to confirm this theory. In the contest which arose over the seat of Senator Stephenson, of Wisconsin, where the primary system is in full

operation, some interesting facts were brought out. It appears that in 1909, at the time when Senator Stephenson was nominated in the primaries, the expenditures at the primary election by all candidates, exclusive of the amounts spent by the senatorial candidates, is conservatively estimated on the returns required by law at \$610,174, and if the amount expended by all the senatorial candidates be added, the total amount spent in those primary elections comes to \$802,659, while the total vote, Republican and Democratic, was 230,291. In other words, it cost \$3.48 per vote to get that number of voters to the polls, and I believe that I am right in saying that only about one-half of the Republican vote of the State was actually polled in the primaries. Nothing in the past under the old convention system has equalled this really appalling expenditure at the primaries in a single year and in a single State. From this evidence of the primaries, what reason have we to hope that money will not play an enormous part in securing the initiation, the reference, and the adoption of any adroitly drawn laws which the great money interests may happen to desire? . . .

Let me in closing end where I began by once more calling your attention to the purpose and spirit of the Constitution of the United States. The immediate object of the men who met at Philadelphia in 1787 was to provide for a Union of the States in a general gov-

ernment and for the adjustment of the relations between the general government thus created and the several States. The result in this direction was a very remarkable piece of work and has ever since commanded the admiration of the world. It was the application of the principles of federation on a scale and in a manner which made it practically a new achievement in the science of government and the fundamental questions growing out of the relations of the States to the general government, which occupied in their discussion the first seventy years of our existence, and which culminated in a civil war, have been settled. No one to-day desires to disturb those relations as they have been finally determined, and no direct change in them is sought by any of those who now urge reforms upon us.

The rest of the work in 1787 was the establishment and declaration of certain fundamental principles upon which free government was to rest. In the Constitution itself the makers acted on the principle that the three great branches of government — the legislative, the executive, and the judicial — should be equal, independent, and co-ordinate. Their action carried out in practice the fundamental principle of free government, as I conceive it, which is expressed in the constitution of Massachusetts in specific words. Let me quote those words to you, for they are, as I believe, a very great and a very noble declaration. The thirtieth article of the constitution of Massachusetts says:

## 102 COMPULSORY INITIATIVE AND REFERENDUM

In the government of this Commonwealth the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them, to the end it may be a government of laws and not of men.

That is one and perhaps the greatest of the principles embodied by its makers in the Constitution of the United States. But it is only one of many. In the first ten articles of amendment, without which the Constitution would never have been ratified by the necessary number of States, there is embodied, as I have said, a bill of rights, and in those ten amendments every line is a statement of a general principle. The bill of rights was intended to protect the rights of minorities and of individuals. The separation of the three great departments was meant to prevent the concentration of power, and all were intended to put limitations upon numerical majorities. The framers of the Constitution did not believe that any man or any body of men could safely be intrusted with unlimited power. They thought, and all experience justified them in thinking, that human nature could not support the temptation which unlimited power always brings. They had deeply ingrained the belief of the English-speaking people that the power of the king should be strictly limited. They felt that this

great principle applied with equal force to ten thousand or ten million kings — in other words, to a popular majority of numbers. They established a representative democracy and a thoroughly popular government, but they thought that the “right divine of kings to govern wrong” was as false and dangerous a maxim when applied to many men called voters as when applied to one who happened to wear a crown.

The people, through their delegates, made the Constitution. They can unmake it. They can create and they can destroy, but the destruction or the alteration must be the work of the people and not of a temporary majority of voters. It is for this reason that it is provided in the Constitution that amendment and change can only come by methods which insure, so far as possible, the expression of the will of a steadfast and decisive if not overwhelming majority of the people. Two-thirds of their representatives in Congress and the Senate must vote for an amendment, and three-fourths of the States must adopt it. The British Constitution puts limitations on the power of the crown; the American Constitution puts limitations on the power of the majority of the voters. These limitations are to assure the preservation of the Constitution from any change which the people — the whole people and not merely a majority of voters — do not demand, and to make it certain that there shall be no amendment except after ample consideration and by the most

decisive expression of the people's will. If all these checks and balances, all these carefully devised safeguards which are to secure the people in their own government and to protect minorities and individuals, are to be swept away, then there is no need of any Constitution at all. General principles must then be cast to the winds, and we must hold our lives, our honor, our liberties, and our property at the will of a majority of numbers, narrow perhaps, fleeting, uncertain; here to-day and gone to-morrow, from which no man can gather assurance as to his future or as to his rights.

The most vital perhaps of all the great principles embodied in the Constitution is that of securing the absolute independence of the judiciary. Courts are human and they have erred, but bear in mind that this is a comparative world. As Doctor Johnson wisely said:

In political regulations good can never be complete; it can only be predominant.

It is not a question of whether you are going to substitute for a system imperfect with some of the imperfections inherent in human nature another system absolutely perfect and final. The question to be decided is whether the system which is proposed is better than the system we have. The great Roman jurist, Ulpian, defined the law in a memorable phrase which



was subsequently embodied in the Digest or Pandects of Justinian. Let me recall it to you:

*Justitia est constans et perpetua voluntas jus suum cuique tribuendi. Juris præcepta sunt hæc: honeste vivere, alterum non lædere, suum cuique tribuere. Jurisprudencia est divinarum atque humanarum rerum notitia, justi atque injustis scientia.*

That is a great and noble conception of the law and one that it is well to bear in mind so that you may determine where it is most likely to be observed and held sacred, whether it will be most surely found in the quiet of the court or among vast masses of men heated with political and party passion. In the long course of the centuries during which western civilization has been developed it has been proved again and again that whatever its defects there is nothing so essential, so vital to human rights and human liberty, as an independent court. Beware how you break down that principle because courts here and there have erred. Hard cases make the worst laws and bad laws are the breeders of anarchy and disorder. We must proceed, if we would proceed with safety and lasting results, on general principles; and if history proves anything it proves that the greatest safeguard of human rights in the long run is to be found in independent courts which can be swayed neither by the whisper of the bribe-giver, by the clamor of the mob, by the command of the autocrat, or by the dark threats of secret organizations.

## THE CONSTITUTION AND THE BILL OF RIGHTS <sup>1</sup>

DURING the last few years other questions have arisen far more important than any tariff or any currency can possibly be, because they involve nothing less than the fundamental principles of American government. An agitation has been in progress and is now being carried on by men of both parties, whether the party division which it causes has been declared or not, which aims at and if successful can lead to nothing less than a complete revolution in our system of government. The scheme has now extended to the primaries, which are merely a part of the machinery of government and do not in themselves involve any constitutional principle. It has been seriously proposed in this State, and I think in this State alone, to abolish party enrolment from the party primary. The proposition is a contradiction in terms. The primaries were established for the purpose of purifying and improving the methods of nominating party candidates and for no other object. Those who belong to no party are not compelled to enter them and have

<sup>1</sup> From a speech as presiding officer at the Republican State Convention of Massachusetts held in Boston October 5, 1912.

no right to do so unless they intend to become members of some party for which and for which alone party primaries exist. If you abolish the party enrollment and the party ticket and put all the names on one ballot you turn the primaries into a preliminary election. But at the same time you do much more than this, for you would then have an arrangement by which organized minorities, belonging to any party or to none, could go into the primaries and control the nominations of all parties. In other words, under this system not only Democrats but any voters not Republicans can decide the selection of Republican candidates, and of course the same is true of Democratic candidates, who could be nominated by Republican or even Prohibition votes. By this scheme we are to be deprived of the right of choosing our own candidates and the whole thing becomes a travesty on popular government. It is idle to suppose that large bodies of men who agree on certain political principles will long submit to having candidates chosen for them whose selection they cannot themselves control. My right as a citizen and the right of those who think with me to nominate our own candidates for office is a great and inalienable right which is not to be taken from us by any jugglery of the statutes. If Republicans are not to have the opportunity to select their own candidates and Democrats are not to have the opportunity to select theirs, then I say that it is the duty of every responsible political

party holding well-settled principles and favoring well-defined policies to select its own candidates by its own voluntary methods and place their names upon the ballot on election-day by nomination papers. If the party enrolment is abolished the primaries are worthless for the purpose for which they were established, and it will be the duty of all responsible parties to stay outside of them and nominate their candidates themselves and then place them upon the ballot under the means provided by law. I have mentioned this point because, although primaries affect only the mechanism of government, this attempt so to arrange them, that they will become a mere vehicle for an organized minority to control all nominations, brings them at once into relation with the much more profound changes affecting fundamental principles which are now urged upon us.

The agitation of which I have spoken and which, as I have said, aims at nothing less than a complete revolution in our system of government, begins by this distortion of the primaries and then seeks to break down representative government and make the courts subservient to the will of a majority of the voters at any given moment. The first purpose is to be accomplished by the compulsory initiative and referendum; the second by the recall of judges and the reversal by a popular vote of judicial decisions. I am opposed to the compulsory initiative and referendum

because I am in favor of government by the people and through majorities of the voters and I am opposed to and always shall resist to the utmost of my power any attempt to substitute for them government by minorities of the voters. If you will study carefully the compulsory initiative and referendum you will find that it is nothing but a scheme to enable minorities to rule. A small minority of the voters can initiate legislation and compel the legislature to pass laws. Wherever the compulsory initiative and referendum have been adopted, this power of compulsory initiation has been conferred upon a small percentage of the voters. Remember at the outset that the voters themselves are only a small minority of the people. The total vote at the last presidential election was in round numbers fifteen millions and the population of the United States was ninety millions. That is, one-sixth of the people took part in the presidential election and one-twelfth determined the result. The voters are not the people. They are merely the necessary instrument selected for the expression of the popular will. But they are not the people; they are representatives and trustees. Now it is proposed to give to a small fraction of the voters — not of the people — this great power to compel the submission of laws to a popular vote and when those laws are submitted to the popular vote experience shows that they are almost invariably carried by a minority of the

voters. Those who are interested in the passage of the law of course take pains to vote; a small number who are interested in the other direction vote against it, and the great mass remain indifferent. In the State of Ohio last September forty-two constitutional amendments were submitted to the people. It was

<sup>1</sup> The details of the voting, which are very instructive, are given by Mr. C. B. Galbraith, who was secretary of the convention, in an article in the *New York Independent* for December 19, 1912.

Following is the vote on each of the amendments:

No.		VOTES	
		Yes	No
1.	Reform in Civil Jury System.....	345,686	203,953
2.	Abolition of Capital Punishment.....	258,706	303,246
3.	Depositions by State and Comment on Failure of Accused to Testify in Criminal Cases	291,717	227,547
4.	Suits against the State.....	306,764	216,634
5.	Damages for Wrongful Death.....	355,605	195,216
6.	Initiative and Referendum.....	312,592	231,312
7.	Investigations by Each House of General Assembly.....	348,779	175,337
8.	Limiting Veto Power of Governor.....	282,412	254,186
9.	Mechanics' and Builders' Liens.....	278,582	242,385
10.	Welfare of Employees.....	353,588	189,728
11.	Workmen's Compensation.....	321,558	211,772
12.	Conservation of Natural Resources.....	318,192	191,893
13.	Eight-Hour Day on Public Work.....	333,307	232,898
14.	Removal of Officials.....	347,333	185,986
15.	Regulating Expert Testimony in Criminal Trials.....	336,987	185,458
16.	Registering and Warranting Land Titles.....	346,373	171,807
17.	Abolishing Prison Contract Labor.....	333,034	215,208
18.	Limiting Power of General Assembly in Extra Sessions.....	319,100	192,130
19.	Change in Judicial System.....	264,922	244,375
20.	Judge of Court of Common Pleas for Each County.....	301,891	223,287
21.	Abolition of Justices of the Peace in Certain Cities.....	264,832	252,936
22.	Contempt Proceedings and Injunctions.....	240,896	257,302
23.	Woman's Suffrage.....	249,420	336,875
24.	Omitting Word "White".....	242,735	265,693
25.	Use of Voting Machines.....	242,342	288,652
26.	Primary Elections.....	349,801	183,112
27.	Organization of Boards of Education.....	298,460	213,337

practically a revision of their fundamental law involving questions of the greatest moment. Fifty per cent only of the vote of Ohio for governor in 1908 was cast for the amendment receiving the highest number of votes and less than forty per cent for the amendment receiving the lowest number of votes. Every amend-

No.		VOTES	
		Yes	No
28.	Creating the Office of Superintendent of Public Instruction to Replace State Commissioner of Common Schools.....	256,615	251,946
29.	To Extend State Bond Limit to Fifty Million Dollars for Inter-County Wagon Roads....	272,564	274,582
30.	Regulating Insurance.....	321,388	196,628
31.	Abolishing Board of Public Works.....	296,635	214,829
32.	Taxation of State and Municipal Bonds, Inheritances, Incomes, Franchises and Production of Minerals.....	269,039	249,864
33.	Regulation of Corporations and Sale of Personal Property.....	300,466	212,704
34.	Double Liability of Stockholders and Inspection of Private Banks.....	377,272	156,688
35.	Regulating State Printing.....	319,612	192,378
36.	Eligibility of Women to Certain Offices.....	261,806	284,370
37.	Civil Service.....	306,767	204,580
38.	Out-Door Advertising.....	261,361	262,440
39.	Methods of Submitting Amendments to the Constitution.....	271,827	246,687
40.	Municipal Home Rule.....	301,861	215,120
41.	Schedule of Amendments.....	275,062	213,979
	For License to Traffic in Intoxicating Liquors....	273,361	
	Against License to Traffic in Intoxicating Liquors.		188,825

Some recent Ohio election statistics are given here for purposes of comparison. The vote for governor in 1908 was 1,125,054; in 1910 932,262.

The highest vote cast on any amendment was 586,295 on woman's suffrage; the lowest, 462,186, was polled on the liquor license amendment. A vigorous campaign was waged for both of these. It will be noted, however, that the aggregate vote on the latter was much lower than that given for any other proposal. It stood alone at the head of the second column of the ballot, and many voters evidently, after following down the column to No. 41, thought they had reached the end of the list and did not notice the license proposal at the head of the next column.

Of all questions considered, the initiative and referendum was most thoroughly discussed in and out of the convention. It will be noted

ment that was adopted was carried by a third to a quarter of the voters of the State who voted for governor in 1908.<sup>1</sup> Constitutional amendments must be submitted to the people and always have been in the States, but it is monstrous that anything less than a

that while the majority for this prime article of the progressive faith is large, it is exceeded by that given for each of the twenty-three other proposals.

Measures accorded a high vote in the convention were not always so popular with the electors of the State. The amendment receiving the highest majority passed the convention by only a single vote more than the lowest in the entire series, while Nos. 24 and 36, which passed the convention almost unanimously, were both defeated.

Attractive titles undoubtedly helped to increase the majorities in some instances. Amendment No. 1 is brief. Following is the full text:

"The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury."

This amendment was given the title "Reform in Civil Jury System." "Reform" in these progressive times is peculiarly attractive. It is a case in which a rose by any other name would not smell quite so sweet. This initial word probably brought a few thousand votes to an amendment that would certainly have carried under a more appropriate title. In this class should be included No. 10, "Welfare of Employees." It provides that "laws may be passed fixing and regulating the hours of labor, establishing a minimum wage and providing for the health, comfort, safety and general welfare of employees." In this instance also the title helped a proposal that would doubtless have carried with a more explicit designation.

It will be seen that eight of the forty-two proposals failed to receive the required majority. The first of these is the "Abolition of Capital Punishment." The old doctrine of "an eye for an eye and a tooth for a tooth" was promulgated effectively in the convention and before the people. It was also urged that under existing law in Ohio the jury may recommend mercy and thus prevent electrocution. The issue was clearly defined and the result fairly represents the present sentiment of the State on this subject. There are evidences, however, that the verdict is not final and that the time is not far distant when it will be reversed.

To the surprise of the most careful observers No. 22, providing for the regulation of contempt proceedings and the prohibition of injunctions in controversies involving the employment of labor, was lost. The principle embodied in this amendment has been advocated for years by organized labor.

Woman's suffrage was defeated by a decisive majority, but not so large proportionately as that registered against the reform in Oregon in 1910, on the occasion of its third submission to the electors of that



majority of all the voters should be able to adopt a constitutional amendment. We had two constitutional amendments, of no great importance, submitted in this State at the last election. Less than two-thirds, not of the voters but of those who came to the polls,

State through initiative petition. The liquor interests were most active in opposing this amendment. Unfortunately the opposition to woman's suffrage adversely affected No. 36, which provided for the appointment of women to certain offices of the State and its political subdivisions "where the interests and care of women and children are involved." On the face of the returns the electors of Ohio have evidently resolved thoroughly to eliminate women from participation in public affairs.

Perhaps the greatest surprise was the result of the vote on No. 24, "Omitting the Word 'White.'" The Constitution of 1851, which was adopted before the emancipation of the colored race, limited the elective franchise to "every white male citizen of the United States of the age of twenty-one years." The word "white" still remains in the Constitution, although it was made of no effect by the adoption of the fifteenth amendment to the Constitution of the United States. The amendment simply sought to make the Constitution of Ohio harmonize in form with the national Constitution. A similar amendment, complicated, it is true, with other issues, was submitted in this State in 1867 and defeated. Race prejudice is evidently still strong in Ohio, a State that in 1861-65 poured forth her blood freely to blot out an invidious distinction that is still retained in her Constitution.

The authorization of the "Use of Voting Machines" was defeated largely through the strenuous opposition to it in the city of Cleveland, and the apprehension in rural counties that the innovation would involve needless expense. Perhaps the word "machines" had for some a sinister suggestion that increased the unfavorable vote.

Amendment No. 29, best known among its friends as the "good roads" proposal, was strongly combated in the convention and the opposition was carried to the people. The heaviest vote against it was polled by the farmers of the counties that already have good roads. Many voters in the cities and in the country were opposed to raising the bond limit of the Constitution for any purpose.

The last in the list of defeated amendments is No. 38, "Outdoor Advertising." This simply sought to give the General Assembly authority to regulate outdoor advertising, especially billboards, which often mar the beauty of cities by their unsightly displays. The billboard companies fought the amendment and thoroughly circularized the State against it. They succeeded in defeating it by a very narrow margin.

The amendments that carried, without exception, received their large majorities in the large cities of the State. The country vote was light and conservative. In a number of the rural counties every amendment was voted down.

voted on them, and although there was no substantial opposition to either yet they were put into our Constitution by a vote which was less than half of the votes cast for candidates. I could go on and give you case after case of a similar character and they prove beyond the possibility of doubt that the compulsory initiative and referendum is nothing in the world but a device to permit interested and organized minorities to govern. The legislature necessarily represents all the people, whether voted for by all the people or not, and is chosen on that understanding, but the minorities of voters to which we are asked to give this power to compel the submission and the adoption of laws, in the exercise of that power represent nobody but themselves. This system of compulsory initiative and referendum means the conversion of legislatures into mere machines of record and the destruction of representative government. Representative government is the one great advance in the methods of government which has been made in modern times. Its growth, its development, its adoption in one country after another have been coincident with the advance of political freedom, so much so that it has become almost synonymous with it. The first care of every autocrat, of every dictator, of every man who has seized on power for himself alone, has been to break down the representative body or to reduce it to a form and a ceremony. It is now proposed to abandon this great advance

which has been made in modern times and return to earlier and rejected forms. It is done under the utterly false cry of "Let the people rule." It is not a scheme to let the people rule; that is found in the Constitution of the United States. It is a scheme to enable organized minorities of voters to rule and through the devices of the law get possession of the State.

The other great bulwark of freedom has been the independent court. Until the last few years a man would almost have hesitated to have given utterance to such a truism, and now it is proposed to take from the courts their independence. It makes no difference to whom a court is subservient. When it becomes subservient to anybody outside the courtroom — whether that influence comes from the king, from money, or from a body of voters — that court is a servile court. It no longer interprets the law, but it declares that to be the law which someone else wants. Justice from ancient times has always been figured as a beautiful woman, with bandaged eyes, holding with steady hand the scale in which all rights and wrongs are weighed. Those who now assail the courts would drag her from her high throne in the courtroom and put her on the streets to solicit support from the passions of men, to which she will then become at once the victim and the toy. The independent judiciary of the United States, and of England, too, taken as a whole and allowing for all the failures and defects

incident to fallible human nature, has been the most potent defence and protection of the liberty of the individual man and of the rights of minorities against the oppression of majorities. I cannot here to-day argue this great question in detail; that would take hours instead of minutes. I merely point out to you that it is now assailed and that I do not believe that representative government and judicial independence, which have been the greatest achievements of our race in its battle for political freedom, have suddenly become dangerous to popular government. Mark well that all this agitation is directed against the representative and judicial branches of the government. I find in no programme any attempt to limit the executive, and it is logical and inevitable that this should be the case. Constitutional government moves too slowly to suit some people who wish to convert it into an instrument for the quick satisfaction of their own desires and aspirations, which may be either beneficial or hurtful to the people at large. For this reason they would substitute for it a government which consists simply of the voters and executive. Go back fifty years and you find an example of a government of that sort in the Third Napoleon with his empire based on the plebiscite. Abraham Lincoln declared at Gettysburg that the government he was trying to preserve was "a government of the people, for the people, and by the people," and that government was the

government of the United States under the Constitution. On October 22, 1862, Governor Andrew, writing to Daniel Henshaw in regard to the conference of loyal governors recently held at Altoona, said:

In conclusion I cannot but regret the tendency I observe to obtrude matters mainly personal upon the attention of the people. It is the great cause of *Democratic, constitutional, representative government* which is now on trial.

It is the same Constitution now as it was then, except for the war amendments, and if Abraham Lincoln and John A. Andrew thought that it was a government of the people which they were giving their lives to save, I do not believe that any of us need be disturbed if we find ourselves in agreement with them. Lincoln also said, in his first inaugural:

A majority held in restraint by constitutional checks and limitations, and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people.

You observe that he says a majority under "constitutional checks and limitations." He draws the distinction between government by the people and government by a majority of the voters. I have already pointed out the great gulf fixed between those two things, and the proposition which now confronts us will, if carried out, break down government by the people, which is secured by the limitations of the

Constitution, and give us over, bound and helpless, to the action of a majority of the voters appearing at any given moment — voters who are a minority of the people and whose majority may be fleeting, temporary, or accidental. It was against this precise situation that the special checks and limitations which Lincoln approved were devised by the convention over which Washington presided. Let me bring home to you just what I mean by asking your attention to the first ten amendments to the Constitution. Those amendments constitute a Bill of Rights. They have become so much a part of the life of each one of us that we think no more of them than of the air we breathe. Lest we forget, let me recall some of them to you. These amendments protect every man in his religion. There may be only two or three gathered together, but Congress can make no law to touch them. They are secure in their right to worship God in their own way. Within a few days a banner has been borne through the streets of a Massachusetts city bearing the demand: "No God — No Master." How do you think that proposition compares with the religious freedom guaranteed to one and all by the Constitution of the United States?

To each one of you the Bill of Rights assures freedom of speech. Into the third and fourth amendments our ancestors put the principle of Coke's great declaration that "the house of every man is to him as his castle

and fortress" by securing each one of us against the quartering of soldiers and against unreasonable seizures and search-warrants. In Article V it is provided that no man shall be held to answer for a capital or otherwise infamous crime, except by presentment by a grand jury; nor be subject to be twice put in jeopardy of life or limb for the same offence; nor compelled to be a witness against himself; nor deprived of life, liberty, or property without due process of law; and that no man's private property shall be taken for public use without just compensation. Article VI secures to the accused in all criminal prosecutions speedy and public trial by jury, and he must be informed of the nature and cause of the accusation. He shall have the right to be confronted with the witnesses against him and to have compulsory processes for obtaining witnesses in his favor and the assistance of counsel in his defence. By Article VII the right of trial by jury is secured to every one where the value in the controversy shall exceed twenty dollars. Article VIII provides that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Think of what those provisions mean. They defend and protect each one of us in that which is dearest to us. They are the guardians of human rights, for every item there set down is one of the rights of men and none other. Could there be a greater misfortune than

to have these famous clauses weakened, broken, mutilated, or destroyed? Whose rights do they protect — the rights of majorities? On the contrary, they are the protection of the individual man and of small minorities of men against the power of majorities. Who are to interpret those provisions and say whether the laws passed by a majority of voters infringe or not upon these great guarantees of liberty? The courts; the courts alone can secure us in the rights which the Constitution gives us. Get rid of representative government, get rid of the courts, and you find yourself at the mercy of any momentary majority of the voters, a minority of the people — usually a minority fraction of all the voters entitled to vote. Your life, your liberty, your property, are left at the discretion of a majority of the voters, which may be accidental, fleeting, temporary, without any chance for that second thought or that appeal to another tribunal which were secured to each one of us by the founders of the Republic. The Constitution is not a law. It is a declaration of principles. The effort now is to turn it into a statute, to be altered by the whim or the passion of the moment. The Constitution guards the rights of each one of us, no matter how humble or how poor. I say to you beware how you allow any man or any men to lay their hands upon that great instrument. It has been the admiration of the world. We have prospered and thriven and been an example to man-



kind under its beneficent provisions which created a self-limited democracy, something which until that day men had thought impossible of accomplishment. Do not let it be torn down, for if you do all the great advance in freedom which it represents will perish and we shall return to those primitive forms of government which in ancient times and in modern times as well have oscillated between anarchy and despotism, with at best only brief intermissions of true and ordered liberty.

## THE DEMOCRACY OF ABRAHAM LINCOLN <sup>1</sup>

IN his History of Twenty-five Years Sir Spencer Walpole says: "Yet, perhaps, of all the men born to the Anglo-Saxon race in the nineteenth century, Mr. Lincoln deserves the highest place in history. No man ever rose more quickly to the dignity of a great position. No man ever displayed more moderation in counsel, or more resolution in administration, or held a calmer or steadier course. Through the channel of difficulty and danger, he kept his rudder true."<sup>2</sup> This is high praise, but I think that we may go a step further. As the nineteenth century recedes into the past it becomes constantly more apparent that the three great events of that period, the three great facts with a supreme influence upon Western civilization and upon the world, were the preservation of the American Union, the consolidation of Germany, and the unification of Italy. With these three events the names of three men are indissolubly associated — Lincoln, Cavour, and Bismarck. They stand forth as embodying the cause of national unity in the United States, in Italy, and in Germany. They were the

<sup>1</sup> Address to the students of Boston University School of Law, March 14, 1913.

<sup>2</sup> History of Twenty-five Years, Vol. 11, p. 65.

leaders, the directing minds in the mighty conflicts which produced the great results, and they loom ever larger and more distinct, as the years pass by, like high mountain peaks, which at a distance separate themselves from the confused masses of the range from which they rise. I have mentioned these three commanding figures in the order in which, as it seems to me, they stand, and as I think they will stand when the final account is made up. But comparisons are needless. The greatness of Abraham Lincoln is admitted by the world and his place in history is assured. Yet to us he has a significance and an importance which he cannot have to other people. It is impossible to translate a beautiful poem without losing in some degree the ineffable quality, the final perfection which it possesses in the language in which it was written. In its native speech the verse is wedded to the form and to the words and has tones in its voice which only those who are "to the manner born" can hear. So Lincoln, whose life, rightly considered, was a poem, speaks to his own people as he does to no other. What he was, and what he did and said, is all part of our national life and of our thoughts as well. We see in him the man who led in the battle which resulted in a united country and we have watched his crescent fame as it has mounted ever higher with the incessant examination of his life and character. No record has ever leaped to light by which he could be shamed.

Apart from all comparisons it is at least certain that he is the greatest figure yet produced by modern democracy which began its onward march at the little bridge in Concord. If ever a man lived who understood and loved the people to whom he gave his life, Lincoln was that man. In him no one has a monopoly; he is not now the property of any sect or any party. His fame is the heritage of the people of the United States and, as Stanton said, standing by his deathbed, "He belongs to the ages."

For all these reasons, it seems to me, in these days of agitation and disquiet, when the fundamental principles upon which our government rests and has always rested are assailed, that nothing could be more profitable and more enlightening than to know just what Lincoln's opinions were as to democracy and the true principles of free government. I am well aware that objection may be made to Lincoln, as an authority for our guidance, of the same character as the one brought against the framers of the Constitution, which is that he died nearly half a century ago and that, therefore, however excellent he was in his own day and generation, he is now out of date as a guide in public questions because all conditions have so completely changed. It is quite true that Lincoln, like Washington, never saw a telephone, an automobile, or a flying-machine, and that economic conditions as well as those of business and finance have been radically altered

since his day. But this is really an inept objection because the subject upon which we seek to know his thoughts concerns the relation of human nature to certain forms and principles of government among men, most of which were as familiar to the speculations of Plato and Aristotle as they are to us; some of which are older than recorded history while the very youngest have been known, discussed, and experimented with for centuries. So I think we may dismiss the suggestion that Lincoln is antiquated and realize that upon the principles of free government and the capabilities of human beings in that direction he is an authority as ancient as the Greek philosophers and as modern as the last young orator who has just discovered that this very comparative world is not abstractly and ideally perfect.

What, then, were the thoughts and opinions of Abraham Lincoln as to the principles upon which free and ordered popular government should rest? He alone can tell us. No one is vested with authority to proclaim to us what Lincoln thought or believed upon any subject. There is no high priest at that altar to utter oracles which no one else can question and which he alone can interpret. Lincoln's convictions and opinions are to be found in only one place, in his own speeches and writings which, like his fame, belong to his countrymen and to mankind. Fortunately we need not grope about to discover his meaning.

Few men who have ever lived and played a commanding part in the world have had the power of expressing their thoughts with greater clearness or in a style more pellucid and direct than Lincoln. Of him it may truly be said that his statements are demonstrations. You will search far before you will find a man who could state a proposition more irresistibly, leaving no avenue of escape, or who could use a more relentless logic than the President of the Civil War. We feel as we read his life that he had in him the nature of a poet, the imagination which pertains to the poetic nature and which was manifested not only in what he said and did but in his intuitive sympathy with all sorts and conditions of men. Combined with these attributes of the poetic genius, which is as rare as it is impalpable, were qualities seldom found in that connection. He was an able lawyer and had the intellectual methods of the trained legal mind. He was also the practical man of affairs, as well as the great statesman, looking at facts with undazzled eyes and moulding men and events to suit his purpose. There is no occasion for guesswork, assertion, or speculation in regard to him when he turned away from the visions of the imagination to confront and deal with the hard problems of life and government, never to any man harder than they were to him.

Let us then examine his writings and speeches and see what light they throw upon the questions now sub-

ject to public discussion, which relate to the Constitution of the United States and to the principles upon which that great instrument was based.

Let me remind you at the outset that I am going to deal only with the fundamental principles of government embodied in the Constitution and not at all with the many provisions which simply establish the machinery or mechanism of government. It is important to keep this distinction in mind for it is frequently lost sight of and the ensuing confusion is deleterious to intelligent comprehension. The mechanism of government may be very important and a change in it may be either beneficent or unfortunate, but it is not vital, whereas, if the fundamental principles are altered, weakened, or abandoned the whole structure will come crashing to the ground. For example: to change the method of electing senators may be harmful or beneficial but it is only a change of mechanism. But to abandon the equal representation of the States in the Senate is a vital and destructive change of principle, for the extinction of the States would mean the extinction of our governmental system and would involve in its ruin the basic principle of local self-government. The number of judges in the Supreme Court is a matter of machinery and expediency. But the appointment and tenure of those judges embody principles which go to the very root of all ordered and stable government.

It is on questions of principle alone that I would seek to learn the opinions of Lincoln, and before entering upon that inquiry let me define the questions upon which it seems to me well that we should seek his guidance at this time. They are two in number — representative government as involved in the agitation in favor of the compulsory initiative and referendum, and the independence of the courts which is at stake in the demand for the recall of judges and the review of judicial decisions by popular vote. In an attempt to set forth Lincoln's opinions upon these questions it would be impossible to consider the arguments for or against these two propositions, for each one by itself requires a discussion of great length and elaboration. I shall make no effort to show that the compulsory initiative and referendum, so loudly demanded in the name of the people, is in essence a plan to secure not the rule of the people but arbitrary government by small, highly organized, and irresponsible minorities of voters. Nor shall I try to show that the judicial recall and the review of judicial decisions by popular vote would not only, like the compulsory initiative and referendum, establish the power of highly organized minorities among the voters but would also give us servile and subservient courts controlled by an outside force and therefore incapable of honestly interpreting the law and doing justice between man and man. I will, however, pause long enough to point out



that both schemes lead consciously or unconsciously to the same result. If successful they would bring us to a government composed of the executive and the voters. It is inevitable that this should be the case, for if you reduce to impotency the representative and judicial branches of the government nothing remains but the executive and the voters. The last conspicuous example of this kind of government was the second empire in France. By a vote of over seven millions to two hundred and fifty thousand Napoleon was made emperor. On May 8, 1870, his constitutional changes, continuing the empire on a more liberal basis, were sustained by a vote of over seven millions to a million and a half, and within six months after this immense expression of popular approval his empire had crumbled into ruins and he was himself a prisoner in Germany. The result of this form of direct democracy was not happy in that instance, at least. And at bottom the question is between direct democracy on the one hand and self-limited democracy on the other. The first is very old, the second very new, dating on a large scale at least only from our own Constitution of 1787, which Lord Acton speaks of as an achievement in the way of self-limitation which men had up to that time regarded as impossible. I have no intention of discussing the merits or demerits of the two systems, but the fact that direct democracy is old and our self-limited democracy is new must not be forgotten. When

it is proposed to emasculate representative government, as was done by the Third Napoleon, or to take from the courts their independence, it may be a change for the better, as its advocates contend, because almost anything human is within the bounds of possibility, but it is surely and beyond any doubt a return from a highly developed to a simpler and more primitive stage of thought and government. A system of government which consists of executive and people is probably the very first ever attempted by men. Among gregarious animals we find the herd and its leader, and that was the first form of government among primitive men, if we may trust the evidence of those tribes still extant in a low state of savagery who alone can give us an idea of the social and political condition of prehistoric man. Mr. Andrew Lang, in *Custom and Myth*, to illustrate a very different subject, says (page 237):

Even among those democratic paupers, the Fuegians, "the doctor-wizard of each party has much influence over his companions." Among those other democrats, the Eskimo, a class of wizards, called Angakuts, become "a kind of civil magistrates" because they can cause fine weather, and can magically detect people who commit offences. Thus the germs of rank, in these cases, are sown by the magic which is fetichism in action. Try the Zulus: "The heaven is the chief's"; he can call up clouds and storms, hence the sanction of his authority. In New Zealand, every Rangatira has a supernatural power. If he touches an article, no one else dares to approach it, for fear of terrible supernatural consequences. A head chief is "tabued an inch thick, and perfectly unapproachable." Mag-

ical power abides in and emanates from him. By this superstition, an aristocracy is formed and property (the property, at least, of the aristocracy) is secured. Among the Red Indians, as Schoolcraft says, "priests and jugglers are the only persons that make war and have a voice in the sale of the land." Mr. E. W. Robertson says much the same thing about early Scotland. If Odin was not a god with the gifts of a medicine-man and did not owe his chiefship to his talent for dealing with magic, he is greatly maligned. The Irish Brehons also sanctioned legal decisions by magical devices, afterward condemned by the Church. Among the Zulus "the Itonyo (spirit) dwells with the great man; he who dreams is the chief of the village." The chief alone can "read in the vessel of divination." The Kaneka chiefs are medicine-men.

The chiefs here described derive their authority from the popular belief in their magic powers, but the germ of government which is apparent is that of people and executive. Out of these wizards and medicine-men, these chiefs protected by the "tabu," came the king, as Mr. Frazer shows in his *Early History of the Kingship*. The machinery was constantly elaborated and perfected as the centuries passed and the king steadily absorbed more power, as was inevitable, but the system remained in essence the executive and the people. On the other hand, we may study experiments in direct democracy in Athens and in Rome more than two thousand years ago and at a later time in some of the mediæval Italian cities. This examination will reveal the fact that representative government on a large scale is a modern development originat-

ing in England, and also that while the people began long ago to place limitations on the once unrestrained power of the crown or the kingship, it was in our Constitution that a people for the first time put limitations upon themselves, which has hitherto been considered an evidence of unusual intelligence and of a high civilization. I have ventured upon this digression because it seems to me important to emphasize the fact that these efforts to get rid of representative government and the independence of the judiciary, whether good or bad, are not attempts to advance from what we now have but to revert to earlier and more primitive forms of social and political organizations. This point of reversion to earlier forms so far as it relates to the courts has never been more vividly and strongly stated than by Mr. Roosevelt in an article upon the vice-presidential candidates which he contributed to the Review of Reviews in November, 1896 (page 295):

The men who object to what they style "government by injunction" are as regards the essential principles of government in hearty sympathy with their remote skin-clad ancestors who lived in caves, fought one another with stone-headed axes, and ate the mammoth and woolly rhinoceros. They are interesting as representing a geological survival, but they are dangerous whenever there is the least chance of their making the principles of this ages-buried past living factors in our present life. They are not in sympathy with men of good minds and sound civic morality. . . .

Furthermore, the Chicago convention attacked the Supreme

Court. Again this represents a species of atavism — that is, of recurrence to the ways of thought of remote barbarian ancestors. Savages do not like an independent and upright judiciary. They want the judge to decide their way, and if he does not, they want to behead him. The Populists experience much the same emotions when they realize that the judiciary stands between them and plunder.

Let us now examine what Lincoln said or wrote and try to determine whether he stood for the new or the old, for self-limited or for direct and unlimited democracy with especial reference to the two points of government by representation and judicial independence. On one most memorable occasion Lincoln told the world what the government was for which the people whom he led were pouring out their treasure and offering up their lives. I will not use my own words to describe what he then said but those of an impartial English historian:

One of them (these “beautiful cemeteries”), on the field of Gettysburg, will be near to Anglo-Saxons for all time, because it inspired the famous two minutes’ speech which is, perhaps, the most perfect example in our language of what such a speech on such an occasion should be.<sup>1</sup>

I will read to you the Gettysburg speech thus characterized by Sir Spencer Walpole. Only a portion relates to our subject, but that speech cannot be read

<sup>1</sup> *The History of Twenty-five Years.*” By Sir Spencer Walpole. Vol. 11, p. 67.

or repeated too often by Americans and there never has been a time since the hour of its utterance when it should be more reverently and thoughtfully pondered by all who love their country than in these days now passing over us. It was on the 19th of November, 1863, a little more than four months after the great battle, that Lincoln spoke as follows in dedicating the National Cemetery at Gettysburg:

Fourscore and seven years ago our fathers brought forth on this continent a new nation, conceived in liberty, and dedicated to the proposition that all men are created free and equal.

Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure. We are met on a great battlefield of that war. We have come to dedicate a portion of that field as the final resting-place for those who here gave their lives that the nation might live. It is altogether fitting and proper that we should do this.

But, in a larger sense, we cannot dedicate — we cannot consecrate — we cannot hallow this ground. The brave men, living and dead, who struggled here have consecrated it far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here. It is for us, the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us — that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion; that we here highly resolve that these dead shall not have died in vain; that this nation, under God, shall have a new birth of freedom; and that government of the people, by the people, for the people shall not perish from the earth.

The last sentence is the one which concerns us here. What government did he refer to in those closing lines as the one for which the soldiers died and to the preservation of which he asked his countrymen to dedicate themselves? It was the government of the United States. It could have been no other. His own title was President of the United States; the uniform which the soldiers wore and the flag they followed were the uniform and the flag of the United States of America. He defined this government to which he gave his life as a "government of the people, by the people and for the people." This famous definition, familiar in our mouths as household words, was applied to the government of the United States as created, established, and conducted by and under the Constitution adopted in 1789. With the exception of the three war amendments, and that just adopted establishing the income tax, it is the same Constitution and the same government to-day that it was in November, 1863. Lincoln thought it a popular government. He did not regard it as a government by a president, or by a congress, or by judges, but as a government of, by and for the people, and in his usual fashion he stated his proposition so clearly and with such finality that there is no escape from his meaning. We might well be contented to stop here and, accepting Lincoln's definition, stand upon his broad assertion of the character of our government and look with suspicion upon

those who, in the name of the people, seek to tear down that Constitution which has given us what he declared to be, in the fullest sense, a government of the people.

But it is neither necessary nor desirable to stop with the Gettysburg speech, for it is important to learn, if we can, in more detail what Lincoln thought of the limitations established by the Constitution with especial reference to the principle of representation and the power of the courts. Very early in his career, when he was not yet twenty-seven years of age, he said in an address before the Young Men's Lyceum at Springfield, Illinois, on January 27, 1837:

We find ourselves under the government of a system of political institutions conducing more essentially to the ends of civil and religious liberty than any of which the history of former times tells us. . . . Theirs was the task (and nobly they performed it) to possess themselves, and through themselves us, of this goodly land, and to uprear upon its hills and its valleys a political edifice of liberty and equal rights; 'tis ours only to transmit these — the former unprofaned by the foot of an invader, the later undecayed by the lapse of time and untorn by usurpation — to the latest generation that fate shall permit the world to know. . . .

At what point, then, is the approach to danger to be expected? I answer: If it ever reach us, it must spring up among us; it cannot come from abroad. If destruction be our lot, we must ourselves be its author and finisher. As a nation of free-men we must live through all time, or die by suicide.

In these sentences we see at once that the great style of the Gettysburg address and of the second



inaugural is still undeveloped, that the power of expression so remarkable in later years has not yet been found; but the conviction as to the character of our government, which attained its final form at Gettysburg, is here and the closing words warning us that destruction of our government can come only from ourselves demand our attention now as insistently as when they were uttered by an obscure young man in Illinois looking far into the future only to be passed over unheeded by a careless world.

Such then was Lincoln's belief in the character of our government at the outset of life and such it continued to the end, as I shall show later. Upon the two particular points which we have now under consideration he had, owing to the circumstances of his time, a good deal to say about the courts and very little in express form about representative government, because nobody in his day questioned the representative system. But representative government rests upon certain broad principles in regard to which Lincoln spoke clearly and decisively. The basic theory of representative government is that the representative body represents all the people, and that a majority of that body represents a majority of all the people. To the majority in Congress the power of action is committed, and it is so guarded as to exclude so far as human ingenuity can do it any opportunity for the control of the government by an organized minority

either among the voters or their representatives. It is these very provisions for securing majority rule which have led to the development of such devices as the compulsory initiative and referendum in order that organized minorities may gain a power of control which they could not obtain under a purely representative government.

Having thus established majority rule through the representative system, the framers of the Constitution with their deep-rooted distrust of uncontrolled power anywhere, then proceeded to put limitations upon the power of the majority. They were well aware that a majority of the voters at any given moment did not necessarily represent the enduring will of the people. They knew equally well that in the end the real will of the people must be absolute, but they desired that there should be room for deliberation and for second thought and that the rights of minorities and of individuals should be so far as possible protected and secured. Hence the famous limitations of the Constitution. I need not rehearse them all; the most vital are those embodied in the first ten amendments which constitute a bill of rights, the rights of men, or human rights, and any violation of those rights is forbidden to Congress and to the majority. As further restraints upon the majority they gave the executive a veto, which raised the necessary majority for action to two-thirds, while upon the courts they

conferred, by implication, opportunity to declare, in specific cases, any law to be in violation of the general principles laid down by the Constitution.

Upon this first point of the limitation upon the majority, whether of voters or representatives, which is the essence of our constitutional system of representation, Lincoln spoke in a manner which cannot be misunderstood. He said in the first inaugural:

If by the mere force of numbers a majority should deprive a minority of any clearly written constitutional right, it might, in a moral point of view, justify revolution — certainly would if such a right were a vital one. But such is not the case. All the vital rights of minorities and of individuals are so plainly assured to them by affirmations and negations, guarantees and prohibitions, in the Constitution, that controversies never arise concerning them. . . .

A majority held in restraint by constitutional checks and limitations, and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people.

Nothing could be clearer than these sentences. In Lincoln's opinion the violation of a vital constitutional right was moral justification for revolution, and the last sentence gives a definition of free and real popular government upon which it would be difficult indeed to improve.

I have just said that one of the checks placed upon the power of the majority was the opportunity which, of necessity devolved upon the courts to declare, when

a specific case was brought before them, their opinion that the law involved in the suit was in violation of the Constitution. It is this judicial power, asserted by Marshall, which has led to the present movement to destroy the independence of the courts by subjecting the judges to the recall and their decisions to review at the ballot-box. On this point Lincoln spoke often and with great elaboration. He did so because the famous Dred Scott case was a very burning issue in the years immediately preceding the Civil War. If an opinion was ever delivered by a court which justified resistance to or an attack upon the judicial authority it was that one known by the name of a poor negro — Dred Scott. The opinion against which the conscience of men revolted did not decide the case. It was an obiter dictum. It was delivered solely for the purpose of settling a great political question by pronouncement from the Supreme Court. There was no disguise as to what was intended. Mr. Buchanan, informed as to what was coming after his arrival in Washington, announced in his inaugural that the question of slavery in the territories would soon be disposed of by the Supreme Court. The wise practice of the Supreme Court is to decline jurisdiction of political questions, holding that such questions belong solely to Congress and the executive. In this case the court deliberately travelled outside the record in order to speak upon a purely

political question which then divided the whole country. For such action there is no defence. Born of the passions of the slavery contest, the Dred Scott case stands in our history as a flagrant attempt by the Supreme Court to usurp power. There has been nothing like it before or since. The lesson of that gigantic blunder was learned thoroughly and will never be forgotten by the court at least. The attack upon the dictum of the court began with the masterly dissenting opinion of Mr. Justice Curtis, which wrecked Taney's argument both in the law and the facts. From the courtroom the attack spread over the country and the utterances of the chief justice were assailed with all the bitterness characteristic of that period and defended with equal fervor by those who supported slavery and who declared that a refusal to accept the decision was tantamount to treason. Lincoln, as one of the leaders of the new Republican party, was obliged to deal with it. He did so fully and thoroughly. All that he said deserves careful study, for there is no more admirable analysis of the powers of the courts and of the attitude which should be taken in regard to them. I shall make no excuse for quoting what he said, at length, and I may add that his utterances on this great question require neither explanation nor commentary from me or any one else. I will begin, however, with a protest against a bill for the reorganization of the judiciary, signed by Lincoln as a member of the Il-

linois Legislature. These resolutions, which Lincoln drafted,<sup>1</sup> show what his general views were as to the courts many years before the Dred Scott decision. The important portion of them runs as follows:

For reasons thus presented, and for others no less apparent, the undersigned cannot assent to the passage of the bill, or permit it to become a law, without this evidence of their disapprobation; and they now protest against the reorganization of the judiciary, because: (1) It violates the great principles of free government by subjecting the judiciary to the legislature. (2) It is a fatal blow at the independence of the judges and the constitutional term of their office. (3) It is a measure not asked for or wished for, by the people. (4) It will greatly increase the expense of our courts, or else greatly diminish their utility. (5) It will give our courts a political and partisan character, thereby impairing public confidence in their decisions. (6) It will impair our standing with other States and the world. . . .

(Signed by thirty-five members, among whom was Abraham Lincoln.)

It will be observed that the first two objections state in the strongest terms the principle of the independence of the judiciary, and declare that this great principle is violated by subjecting the judiciary to the legislature, who were the representatives of the people. In this case it happened to be the legislature, but the principle is that the courts should not be subjected to any outside control or influence, whether that control comes from the executive, the legislature, or the voters.

<sup>1</sup> Life of Lincoln, Hay and Nicolay, Vol. 1, p. 164.

Holding these principles, Lincoln sixteen years later was brought face to face with the Dred Scott opinion, and this is how he dealt with it, a little more than three months after it was delivered, in a speech at Springfield, Illinois, on June 26, 1857:

He (Senator Douglas) denounces all who question the correctness of that decision, as offering violent resistance to it. But who resists it? Who has, in spite of the decision, declared Dred Scott free and resisted the authority of his master over him?

Judicial decisions have two uses — first, to absolutely determine the case decided, and secondly, to indicate to the public how other similar cases will be decided when they arise. For the latter use, they are called “precedents” and “authorities.”

We believe as much as Judge Douglas (perhaps more) in obedience to, and respect for, the Judicial department of the government. *We think its decisions on constitutional questions, when fully settled, should control not only the particular cases decided, but the general policy of the country, subject to be disturbed only by amendments of the Constitution as provided in that instrument itself. More than this would be revolution.* But we think the Dred Scott decision is erroneous. We know the court that made it has often overruled its own decisions, and we shall do what we can to have it overrule this. We offer no resistance to it.

Judicial decisions are of greater or less authority as precedents according to circumstances. That this should be so accords both with common sense and the customary understanding of the legal profession.

If this important decision had been made by the unanimous concurrence of the judges, and without any apparent partisan bias, and in accordance with legal public expectation and with

the steady practice of the departments throughout our history and had been in no part based on assumed historical facts, which are not really true; or, if wanting in some of these, it had been before the court more than once, and had there been affirmed or reaffirmed through a course of years, it then might be, perhaps would be, factious, nay, even revolutionary, not to acquiesce in it as a precedent.

But when, as is true, we find it wanting in all these claims to the public confidence, it is not resistance, it is not factious, it is not even disrespectful, to treat it as not having yet quite established a settled doctrine for the country.

Contrast these calm words, uttered under the greatest provocation, with the violent attacks now made on the courts for two or three decisions which are in no respect political and which are as nothing compared to the momentous issue involved in the Dred Scott case, where the freedom of human beings and the right of the people to decide upon slavery in the territories were at stake. There is not a proposition which is not stated with all Lincoln's unrivalled lucidity, and there is not the faintest suggestion of breaking down the power of the courts or of taking from them their independence.

A year later, just before the great debate with Douglas, but when that debate had in reality begun, Lincoln at Chicago on July 10, 1858, again took up the Dred Scott case and spoke as follows:

I have expressed heretofore, and I now repeat, my opposition to the Dred Scott decision; but I should be allowed to



state the nature of that opposition, and I ask your indulgence while I do so. What is fairly implied by the term Judge Douglas has used: "Resistance to the decision"? I do not resist it. If I wanted to take Dred Scott from his master, I would be interfering with property, and that terrible difficulty that Judge Douglas speaks of, of interfering with property, would arise. But I am doing no such thing as that; all that I am doing is refusing to obey it as a political rule. If I were in Congress, and a vote should come up on a question of whether slavery should be prohibited in a new territory, in spite of the Dred Scott decision, I would vote that it should.

That is what I would do. Judge Douglas said last night that before the decision he might advance his opinion, and it might be contrary to the decision when it was made; but after it was made he would abide by it until it was reversed. Just so! We let this property abide by the decision, but we will try to reverse that decision. We will try to put it where Judge Douglas would not object, for he says he will obey it until it is reversed. Somebody has to reverse that decision since it is made; and we mean to reverse it, and we mean to do it peaceably.

What are the uses of decisions of courts? They have two uses. As rules of property they have two uses. First, they decide upon the question before the court. They decide in this case that Dred Scott is a slave. Nobody resists that. Not only that, but they say to everybody else that persons standing just as Dred Scott stands are as he is. That is, they say that when a question comes up upon another person, it will be so decided again, unless the court decides in another way, unless the court overrules its decision. Well, we mean to do what we can to have the court decide the other way. That is one thing we mean to try to do.

Again, in a speech at Springfield, Illinois, on July 17, 1858, he said:

Now as to the Dred Scott decision: for upon that he makes his last point at me. He boldly takes ground in favor of that decision. This is one-half the onslaught, and one-third of the entire plan of the campaign. I am opposed to that decision in a certain sense, but not in the sense which he puts on it. I say that in so far as it decided in favor of Dred Scott's master, and against Dred Scott and his family, I do not propose to disturb or resist the decision.

I never have proposed to do any such thing. I think that in respect for judicial authority, my humble history would not suffer in comparison with that of Judge Douglas. He would have the citizens conform his vote to that decision; the member of Congress, his; the President, his use of the veto power. He would make it a rule of political action for the people and all the departments of the government. I would not. By resisting it as a political rule, I disturb no right of property, create no disorder, excite no mobs.

In some notes for speeches, which the editors date October 1, 1858 (?), we find this fragment, which is of great interest because it shows how strongly Lincoln felt that the Dred Scott case could be dealt with, and set aside under the Constitution without amending that instrument or seeking to break down the independence of the courts. The note runs as follows:

That burlesque upon judicial decisions, and slander and profanation upon the honored names and sacred history of republican America, must be overruled and expunged from the books of authority.

To give the victory to the right, not bloody bullets, but peaceful ballots only are necessary. Thanks to our good old Constitution, and the organization under it, these alone are

necessary. It only needs that every right-thinking man shall go to the polls, and without fear or prejudice vote as he thinks.

Again, in the joint debate at Quincy, Illinois, on October 13, 1858, he said:

We do not propose that when Dred Scott has been decided to be a slave by the court, we, as a mob, will decide him to be free. We do not propose that, when any other one, or one thousand, shall be decided by that court to be slaves, we will in any violent way disturb the rights of property thus settled; but we nevertheless do oppose that decision as a political rule, which shall be binding on the voter to vote for nobody who thinks it wrong, which shall be binding on the members of Congress or the President to favor no measure that does not actually concur with the principles of that decision. We do not propose to be bound by it as a political rule in that way, because we think it lays the foundation not merely of enlarging and spreading out what we consider an evil, but it lays the foundation for spreading that evil into the States themselves. We propose so resisting it as to have it revised if we can, and a new judicial rule established upon this subject.

I will add this: that if there be any man who does not believe that slavery is wrong in the three aspects which I have mentioned, or in any one of them, that man is misplaced and ought to leave us. While, on the other hand, if there be any man in the Republican party who is impatient over the necessity springing from its actual presence, and is impatient of the constitutional guarantees thrown around it, and would act in disregard of these, he too is misplaced, standing with us. He will find his place somewhere else; for we have a due regard, so far as we are capable of understanding them, for all these things. This, gentlemen, as well as I can give it, is a plain statement of our principles in all their enormity.

He discussed the great question many times, but I will make only one more quotation, the passage in the first inaugural, where on the eve of secession and civil war he gave expression, every word weighed and meditated, to his opinions and intentions. On that solemn occasion he spoke thus of the courts:

I do not forget the position, assumed by some, that constitutional questions are to be decided by the Supreme Court; nor do I deny that such decisions must be binding, in any case, upon the parties to a suit, as to the object of that suit, while they are also entitled to very high respect and consideration in all parallel cases by all other departments of the government. And while it is obviously possible that such decisions may be erroneous in any given case, still the evil effect following it, being limited to that particular case, with the chance that it may be overruled and never become a precedent for other cases, can better be borne than could the evils of a different practice. At the same time, the candid citizen must confess that if the policy of the government, upon vital questions affecting the whole people, is to be irrevocably fixed by the decisions of the Supreme Court, the instant they are made, in ordinary litigation between the parties in personal actions, the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of the eminent tribunal. Nor is there in this view any assault upon the courts or the judges. It is a duty from which they may not shrink to decide cases properly brought before them, and it is no fault of theirs if others seek to turn their decisions to political purposes.

From these extracts we may see that Lincoln held that the courts had no right to lay down a rule of

political action and that if they did so no one was bound by it. That now is, indeed, the position of the court itself. He said that no one should resist the decision in the Dred Scott case, but that it was the duty of all who believed that doctrine contrary to freedom and to American principles to seek to have it overruled — not reviewed by the voters at the ballot-box, or changed by the recall of its authors, but simply overruled by the court itself. Again, no one will dissent. But beyond this he did not go. On the contrary, he upheld the judicial authority within its proper domain, and there is no suggestion to be found, even under that bitter provocation, of any attempt to make the courts subservient to any outside power by any such device as a recall. Still less is there any thought of reversing the decision by a popular vote. On the contrary, at Quincy, speaking to a popular audience, he said, as you remember:

We do not propose that when Dred Scott has been decided to be a slave by the court, we, as a mob, will decide him to be free.

There is no need to comment further upon the passages which have just been quoted. It is enough for me to say that Lincoln's discussion of the Dred Scott case seems to me to contain the strongest arguments for an independent judiciary that can be found anywhere. We may also be sure, I think, that Lincoln

did not forget in his righteous indignation at the Dred Scott opinion that every slave who set foot on English soil became a free man by Lord Mansfield's decision in Somersett's case (1772), or that slavery had been ended in Massachusetts by a decision of the Supreme Court of the State in 1783 under the sentence, that "all men are born free and equal," inserted in the constitution of that State for that precise purpose by John Lowell.

Passing now from the particular to the general, let me by a few brief quotations show you what Lincoln thought of our government under the Constitution as a whole. In a speech at Columbus, Ohio, on September 16, 1859, he said:

I believe there is a genuine popular sovereignty. I think a definition of genuine popular sovereignty, in the abstract, would be about this: That each man shall do precisely as he pleases with himself, and with all those things which exclusively concern him. Applied to government, this principle would be, that a general government shall do all those things which pertain to it, and all the local governments shall do precisely as they please in respect to those matters which exclusively concern them. I understand that this Government of the United States under which we live is based upon this principle; and I am misunderstood if it is supposed that I have any war to make upon that principle.

In his address at Cooper Institute, in New York, on February 27, 1860, he said:

Now, and here, let me guard a little against being misunderstood. I do not mean to say we are bound to follow implicitly in whatever our fathers did. To do so would be to discard all the lights of current experience — to reject all progress, all improvement. What I do say is that if we would supplant the opinions and policy of our fathers in any case, we should do so upon evidence so conclusive, and argument so clear, that even their great authority, fairly considered and weighed, cannot stand: and most surely not in a case whereof we ourselves declare they understood the question better than we.

In his reply to the Mayor of Philadelphia, on February 21, 1861, he spoke as follows:

Your worthy mayor has expressed the wish, in which I join with him, that it were convenient for me to remain in your city long enough to consult your merchants and manufacturers; or, as it were, to listen to those breathings rising within the consecrated walls wherein the Constitution of the United States, and, I will add, the Declaration of Independence, were originally framed and adopted. I assure you and your mayor that I had hoped on this occasion, and upon all occasions during my life, that I shall do nothing inconsistent with the teachings of these holy and most sacred walls. All my political warfare has been in favor of the teachings that came forth from these sacred walls. May my right hand forget its cunning and my tongue cleave to the roof of my mouth if ever I prove false to those teachings.

So he spoke at the threshold of the great conflict. Listen to him now as he spoke three years later, with the war nearing its close and when the hand of fate could almost be heard knocking at his door. On

August 18, 1864, in an address to the 164th Ohio Regiment, he said:

We have, as all will agree, a free government, where every man has a right to be equal with every other man. In this great struggle, this form of government and every form of human right is endangered if our enemies succeed. There is more involved in this contest than is realized by every one. There is involved in this struggle the question whether your children and my children shall enjoy the privileges we have enjoyed. I say this in order to impress upon you, if you are not already so impressed, that no small matter should divert us from our great purpose.

There may be some inequalities in the practical application of our system. It is fair that each man shall pay taxes in exact proportion to the value of his property; but if we should wait, before collecting a tax, to adjust the taxes upon each man in exact proportion with every other man, we should never collect any tax at all. There may be mistakes made sometimes; things may be done wrong, while the officers of the government do all they can to prevent mistakes. But I beg of you, as citizens of this great republic, not to let your minds be carried off from the great work we have before us.

He said, on August 22, 1864, in his address to the 166th Ohio Regiment:

It is not merely for to-day, but for all time to come, that we should perpetuate for our children's children that great and free government which we have enjoyed all our lives. I beg you to remember this, not merely for my sake, but for yours. I happen, temporarily, to occupy this White House. I am a living witness that any one of your children may look to come here as my father's child has. It is in order that each one of you may



have, through this free government which we have enjoyed, an open field and a fair chance for your industry, enterprise and intelligence: that you may all have equal privileges in the race of life, with all its desirable human aspirations. It is for this the struggle should be maintained, that we may not lose our birthright — not only for one, but for two or three years. The nation is worth fighting for, to secure such an inestimable jewel.

And on August 31, 1864, in an address to the 148th Ohio Regiment, he said:

But this government must be preserved in spite of the acts of any man or set of men. It is worthy of your every effort. Nowhere in the world is presented a government of so much liberty and equality. To the humblest and poorest amongst us are held out the highest privileges and positions. The present moment finds me at the White House, yet there is as good a chance for your children there as there was for my father's.

With these noble words, uttered as the dark shadows of the past were fleeing away and the light of the coming victory was beginning to shine upon him, let us leave him. As at Gettysburg, over the graves of the dead soldiers, he declared that the great battle had been fought in order that "government of the people, by the people, for the people" should not perish from the earth, so now to the living soldiers he said that nowhere in the world was presented a "government of so much liberty and equality." Thus, at the close, just as at the beginning when he was a young man entirely un-

known beyond the confines of his village, did he speak of the Government of the United States under the Constitution. Thus he described his conception of democracy, and that conception he found fulfilled in the Constitution of the United States and in the great principles of ordered freedom and guarded rights which are there embodied.

There is one other point alluded to by Lincoln when he defined "genuine popular government," which does not directly concern the subject I have been discussing, but which is of quite equal importance and upon which I wish to say a few words in closing. The framers of the Constitution made one great contribution to the science of government, in the application of the principle of federation upon a scale and in a manner never before attempted. A large part of the Constitution is devoted to the arrangement and adjustment of the relations between the States and the general government. Upon the construction of those relations, as we all know, parties divided and our history largely turned for more than seventy years. The contest was between the rights of the States on the one hand and the powers of the central government on the other. The conflict culminated in the Civil War and in the effort of certain States to break up the Union. The result of the war was the preservation of the Union and the defeat of secession. But secession, or the separation of the States, is not the only way in which

the Union can be destroyed. The other and no less effective method of destroying the Union is by the abolition of the States, which could be attained by reducing them to merely nominal divisions and taking from them those powers and duties reserved to them by the Constitution and which alone make them living organisms. The first danger ended forever at Appomattox. The second is threatening us, and in no obscure fashion, to-day. The growth of the power of the central government, together with its constant assumption of new duties, is in a degree inevitable and, in a less degree, no doubt, desirable. But this inevitable movement is always quite rapid enough and should be retarded rather than accelerated. It is not, however, to this tendency of development that I now refer, but to something much graver and which is in its nature absolutely destructive.

There is a widespread agitation in favor of having Presidents nominated as party candidates, not by the people of the States, each State being allotted the number of votes to which it is entitled by the number of party votes cast at a previous election, but by all the members of the party throughout the country without reference to State lines. It is further proposed, and a constitutional amendment with that object in view was pending in the Senate at the last session, to have the President elected by the votes of all the people instead of by the votes of the people of the States, each

State having two votes as a State and additional votes based on population. An amendment to that effect, proposed as an addition to another constitutional amendment, was defeated in the Senate a few weeks ago by a narrow majority.

A President so nominated and elected would not be the President of the United States, but of the American Republic, or President of the Americans, as Louis Napoleon was styled Emperor of the French, having been chosen by a universal plebiscite. Party principles, party organization, party responsibility, would all disappear. Perhaps in this connection it is not amiss to remember that, in a eulogy upon Henry Clay, delivered in the State House at Springfield, Illinois, on July 16, 1852, Lincoln said:

A free people in times of peace and quiet — when pressed by no common danger — naturally divide into parties. At such times the man who is of neither party is not, cannot be, of any consequence. Mr. Clay, therefore, was of a party.

As usual, in discussing any subject, he laid his unerring finger upon a vital point. The destruction of parties and party organizations would reduce the unorganized voters, acting simply as individuals, to a condition of helplessness. We should no longer have great organizations, with declared principles and established traditions, which could be held to strict responsibility, but simply followers of certain chiefs.

Those chiefs would be self-made, presidential candidates with personal manifestoes after the familiar fashion of South American dictators.

But these objections, serious as they are, sink into insignificance when compared with the far graver results which lie behind these propositions. To nominate and elect Presidents by a vote of the whole people, without reference to State lines, would be a step, and a long step, toward the extinction of the States. That would mean the enormous exaltation of the executive power, to which all these movements for the destruction of the Constitution alike tend. The abolition or degradation of the States would mean a real imperialism and not the sham imperialism about which many excellent people were quite needlessly distressed when we took possession of certain islands after the Spanish War. We might continue to call our territorial divisions States, and their chief executive officers governors, but names are nothing and with the States stripped of all power they would be in reality provinces and their rulers prefects appointed in Washington. The abolition of the States would mean the loss or the ruin of the great principle of local self-government, which lies at the very root of free popular government and of true democracy. The States, within their limitations and in the exercise of their proper powers, are the sheet-anchor which keeps the ship of state from drifting helplessly upon the rocks of

empire and of personal autocratic rule, where so many great nations have met untimely wreck.

These are no imaginary dangers, no alarms conjured up to arrest improvement and advance. Actual measures leading to the results I have described are being pressed and advocated. It is a less obvious, a slower, a more insidious way of destroying the Union of States than by open war, but if successful it is equally certain in its results. We should pause long and think well before we enter upon such changes as these, all the more perilous because they are demanded in the name of the people and look harmless, perhaps, to those who do not stop to consider them.

We are confronted to-day with the gravest questions which the American people have been called upon to decide since 1860. I do not mean questions of social or economic policy, nor issues of war, or peace, or foreign relations. I mean questions now pressing upon us which involve the very fabric of our Constitution, under which freedom, order, and prosperity have gone with us hand in hand. It is a time for careful thought, a time to tear aside the veils of speech and come straight to the substance of things, to facts and principles. Let us not at a time like this and in the presence of such questions, be the slaves of words and phrases. In the Book of Judges it is written:

Then said they unto him, "Say now 'Shibboleth.'" And he said "Sibboleth": for he could not frame to pronounce it

right. Then they took him and slew him at the passages of the Jordan.

There has been too much of this of late, too much dependence on how loudly a man could shout certain words and how he pronounced the "Shibboleth" which was proposed to him. Let us get away from words and phrases and come down to facts and deeds. Before we begin to revolutionize our Constitution and its principles, let us know well what that Constitution is, what it means, what it has accomplished, and whither the changes so noisily urged will lead us.

In his message to Congress on July 4, 1861, speaking of the officers of the regular army from the seceding States who had remained true to the government of the Union, Lincoln said:

This is the patriotic instinct of the plain people. They understand, without an argument, that the destroying of the Government which was made by Washington means no good to them.

I have faith that the people to-day feel as they did then. I am sure that when they shall understand whither they are being led they will know that to impair or to destroy the government which Washington made and Lincoln saved "means no good to them."

## JOHN C. CALHOUN <sup>1</sup>

MR. PRESIDENT, when the senior senator from South Carolina (Mr. Tillman), whose illness we all deplore, did me the honor to ask me to take part in the ceremonies connected with the reception of the statue of Mr. Calhoun, I was very much gratified by his request. In the years which preceded the Civil War South Carolina and Massachusetts represented more strongly, more extremely, perhaps, than any other States the opposing principles which were then in conflict. Now, when that period has drifted back into the quiet waters of history, it seems particularly appropriate that Massachusetts should share in the recognition which we give to-day to the memory of the great senator from South Carolina. If I may be pardoned a personal word, it seems also fitting that I should have the privilege of speaking upon this occasion, for my own family were friends and followers in successive generations of Hamilton and Webster and Sumner. I was brought up in the doctrines and beliefs of the great Federalist, the great Whig, and the great Republican. It seems to me, I repeat, not unfitting that

<sup>1</sup>Speech on the Acceptance of the Statue of John C. Calhoun delivered in the Senate of the United States March 12, 1910.



one so bred and taught should have the opportunity to speak here when we commemorate the distinguished statesman who, during the last twenty-five years of his life, represented with unrivalled ability those theories of government to which Hamilton, Webster, and Sumner were all opposed.

From 1787 to 1865 the real history of the United States is to be found in the struggle between the forces of separatism and those of nationalism. Other issues and other questions during that period rose and fell, absorbed the attention of the country, and passed out of sight, but the conflict between the nationalist spirit and the separatist spirit never ceased. There might be a lull in the battle, public interest might turn, as it frequently did, to other questions, but the deep-rooted, underlying contest was always there, and finally took possession of every passion and every thought, until it culminated at last in the appeal to arms. The development of the United States as a nation, in contradistinction to a league of States, falls naturally into four divisions. The first is covered by the administrations of Washington and Adams, when the government was founded by Washington and organized by Hamilton, and when the broad lines of the policies by which its conduct was to be regulated were laid down. When Washington died the work of developing the national power passed into the hands of another great Virginian, John Marshall, who, in the

cool retirement of the Supreme Court for thirty years, steadily and surely, but almost unnoticed at the moment, converted the Constitution from an experiment in government, tottering upon the edge of the precipice which had engulfed the Confederation, into the charter of a nation. While he was engaged upon this work, to which he brought not only the genius of the lawyer and the jurist, but of the statesman as well, another movement went on outside the courtroom, which stimulated the national life to a degree only realized in after years, when men began to study the history of the time.

By the Revolution we had separated ourselves from England and established nominally our political independence. But that political independence was only nominal. The colonial spirit still prevailed. During the two hundred years of colonial life our fortunes had been determined by events in Europe. It was no mere metaphor which Pitt employed when he said he would "conquer America upon the plains of Germany," and the idea embodied in the words of the Great Commoner clung to us even after the adoption of the Constitution, for habits of thought, impalpable as air, are very slow to change. The colonial spirit resisted Washington's neutrality policy when the French Revolution broke out, and as the years passed was still strong enough to hamper all our movements and force us to drift helplessly upon the stormy seas

of the Napoleonic wars. The result was that we were treated by France on one side and by England on the other in a manner which fills an American's heart with indignation and with shame even to read of it a hundred years afterward. And then in those days of humiliation there arose a group of young men, chiefly from the South and West, who made up their minds that this condition was unbearable; that they would assert the independence of the United States; that they would secure to her due recognition among the nations; and that rather than have the shameful conditions which then existed continue they would fight. They did not care much with whom they fought, but they intended to vindicate the right of the United States to live as a respected and self-respecting independent nation. Animated by this spirit, they plunged the country into war with England.

They did not stop to make proper preparations; their legislation was often as violent as it was ineffective; the war was not a success on land, and was redeemed only by the victory at New Orleans and by the brilliant fighting of our little navy. On the face of the Treaty of Ghent it did not appear that we had gained a single one of the points for which we went to war, and yet the war party had really achieved a complete triumph. Through their determination to fight at any cost we were recognized at last as an independent nation, and, what was far more important, we had forever destroyed the colo-

nial idea that the politics and the peace of the United States were to veer hither and thither at the bidding of every breeze which blew from Europe. Such work could not have been done without a vigorous growth of the national spirit and of the national power, and the group of brilliant men who brought on the war were entirely conscious that in carrying out their policy they were stimulating the national — the American — spirit to which they appealed. Chief among the leaders of that group of young men who were responsible for the origin and conduct of the War of 1812 was John C. Calhoun.

As the war, with its influences and results, sank back into the past, domestic questions took possession of the field, and the conflict between the separatist and national forces which had been temporarily obscured forged again to the front, but under deeply altered conditions. When John Marshall died in 1835, his great work done, the cause which he had so long sustained had already entered upon its third period — the period of debate — and the task which had fallen from the failing hands of the great chief justice was taken up in another field by Daniel Webster, who for twenty years stood forth as the champion of the proposition not that the Constitution could make a nation but that, as a matter of fact, it had made a nation. Against him was Calhoun, and between the two was Henry Clay. The twenty years of debate which then en-

sued are known familiarly as the days of Clay, Webster, and Calhoun. The names of the Presidents who occupied the White House during most of that time have faded, and the era of debate in the history of the parliamentary struggle between the national and the separatist principles is not associated with them but with the great senators who made it illustrious. As the century passed its zenith all three died, closely associated in death as they had been in life. The compromise which Clay and Webster defended and of which Calhoun despaired was quickly wrecked in the years which followed, and then came war and the completion of the work begun by Washington, through the life and death of Abraham Lincoln and the sacrifices and the tragedy of four years of civil war.

To have been, as Calhoun was, for forty years a chief figure in that period of conflict and development — first a leader among the able men who asserted the reality of the national independence and established the place of the United States among the nations of the earth, and afterward the undisputed chief of those who barred the path of the national movement — implies a man of remarkable powers both of mind and character. He merits not only the serious consideration which history accords, but deserves also that we should honor his memory here, and, turning aside from affairs of the moment, should recall him and his work in order that we may understand what he was and what he meant.

He was pre-eminently a strong man, and strong men, leaders of mankind, who shape public thought and decide public action, are very apt to exhibit in a high degree the qualities of the race from which they spring. Calhoun came of a vigorous race and displayed the attributes, both moral and intellectual, which marked it, with unusual vividness and force. On both sides he was of Scotch descent. His name is a variant of the distinguished Scotch name Colquhoun. It was a place-name, assumed at the beginning of the thirteenth century, when they came into possession of certain lands, by the noble family which was destined to bear it for many generations. Judged by the history of the knights who in long succession held the estates and the title, the Colquhouns or Calhouns, who spread and multiplied until they became a clan, were a very strong, very able, very tenacious stock. They had great need of all these qualities in order to maintain themselves in power, property, and position during the five hundred years which elapsed before the first Calhoun and the first Caldwell started on the migration which, after a brief pause in the north of Ireland, carried Patrick Calhoun and some of the Caldwells over the ocean to South Carolina. Both families were typical of their race, for the Colquhouns are spoken of as a Gaelic clan, while the Caldwells were Lowlanders from the Solway. In order to understand these types we must go back for a moment into those dim, almost un-

charted, regions of history where the tribes of the Germanic forests may be discerned pouring down upon the wreck of the Roman Empire. When the successive waves of Teutonic invasion broke upon Britain they swept up to the mountains of the North, driving the native Picts and Scots before them, and no part of their conquest was more thoroughly Danish and Saxon than the lowlands of Scotland. But the Highlander, who represented the survival of the Celts, and the Lowlander, who represented the invaders, were quickly welded together in a common hostility to their great and grasping neighbor of the South. The Celtic blood mingled with that of the descendants of the Teutonic tribes. They quarrelled, they fought side by side, they intermarried; they modified each other and gradually adopted each other's customs and habits of thought. We have but to read Rob Roy to learn that although the Highlander looked down upon the Lowlander as a trader and shopkeeper, and the Lowlander regarded the Highlander as wild and barbarous, the ties of blood and common suffering were strong between them and that they were all Scotchmen. It is a remarkable history, that of Scotland, one of the most remarkable in the annals of men. Shut up in that narrow region of mountain and of lake, a land of storm and cold and mist, with no natural resources except a meagre soil and a tempestuous sea to yield a hard-earned living; poor in this world's goods, few in number,

for six hundred years these hardy people maintained their independence against their powerful foe to the southward and only united with him at last upon equal terms. For six hundred years they kept their place among the nations, were the allies of France, were distinguished for their military virtues on the continent of Europe, and cherished a pride of race and country to which their deeds gave them an unclouded title. They did all these things, this little people, by hard fighting. For six hundred years they fought, sometimes in armies, sometimes in bands, always along the border, frequently among themselves. It was a terrible training. It did not tend to promote the amenities of life, but it gave slight chance of survival to the timid or the weak. It produced the men who fell with their king at Flodden. They could die there where they stood beneath the royal standard, but they could not be conquered.

Those six centuries of bitter struggle for life and independence, waged continuously against nature and man, not only made the Scotch formidable in battle and renowned in every camp in Europe, but they developed qualities of mind and character which became inseparable from the race. For it was not merely by changing blows that the Scotch maintained their national existence. Under the stress of all these centuries of trial they learned to be patient and persistent, with a fixity of purpose which never weakened, a tenacity



which never slackened, and a determination which never wavered. The Scotch intellect, passing through the same severe ordeal, as it was quickened, tempered, and sharpened, so it acquired a certain relentlessness in reasoning which it never lost. It emerged at last complete, vigorous, acute, and penetrating. With all these strong qualities of mind and character was joined an intensity of conviction which burned beneath the cool and calculating manner and of which the stern and unmoved exterior gave no sign, like the fire of a furnace, rarely flaming, but sending forth a fierce and lasting heat. To this somewhat rare combination we owe the proverbial phrase of the "*perfervidum ingenium Scotorum*," an attribute little to be expected in a people so outwardly calm and self-contained. To them, in the struggle of life, could be applied the words in which Macaulay described Cromwell's army: "They marched to victory with the precision of machines, while burning with the wildest fanaticism of Crusaders." After the union, under Queen Anne, peace came gradually to the long-distracted land, broken only by the Jacobite risings of 1715 and 1745, and then the Scotch intellect found its opportunity and began to flower. In the latter part of the eighteenth and the first part of the nineteenth century Scotland gave to poetry Scott and Burns and Campbell; to history Hume and Robertson; to metaphysics Hamilton, Reid, and Stewart; to fiction Smollett and

the "Author of Waverley"; to political economy Adam Smith; and these are only the greatest luminaries in a firmament of stars. Edinburgh became one of the intellectual centres of western civilization, and the genius of Scotland was made famous in every field of thought and imagination. It was just at this time that John Caldwell Calhoun came upon the stage, for the Scotch intellect, trained and disciplined through the darkness and the conflicts of six hundred years, blossomed in the New World, as in the Old, when once the long pressure was removed, when the sword needed no longer to be kept always unsheathed and men could sleep without the haunting fear that they might be awakened at any moment by the light of burning homesteads and the hoarse shouts of raiders from over the border whose path was ever marked by desolation and bloodshed.

In the inadequate description which I have attempted of the Scotch character and intellect, slowly forged and welded and shaped by many stern, hard-fighting generations, I think I have set forth the mental and moral qualities of Mr. Calhoun. He had an intellect of great strength, a keen and penetrating mind; he thought deeply and he thought clearly; he was relentless in reasoning and logic; he never retreated from a conclusion to which his reasoning led. And with all this he had the characteristic quality of his race, the "perfidum ingenium," the intensity of conviction which

burned undimmed until his heart ceased to beat. Thus endowed by nature and equipped with as good an education as could then be obtained in the United States, Mr. Calhoun entered public life at the moment when the American people were smarting under the insults and humiliations heaped upon them by France and England, and were groping about for some issue from their troubles and some vindication of the national honor and independence. Calhoun and his friends, men like Henry Clay, and like Lowndes and Cheves, from his own State, came in on the wave of popular revolt against the conditions to which the country had been brought. Wavering diplomacy, gunboats on wheels, and even embargoes, which chiefly punished our own commerce, had ceased to appeal to them. They had the great advantage of knowing what they meant to do. They were determined to resist. If necessary, they intended to fight.

They dragged their party, their reluctant President, and their divided country helplessly after them. The result was the War of 1812. With war came not only the appeal to the national spirit, which was only just waking into life, but the measures without which war cannot be carried on. The party which had opposed military and naval forces, public debts, tariffs, banks, and a strong central government now found themselves raising armies, equipping and building a navy, borrowing money, imposing high import duties, sustaining the

bank, and developing in all directions the powers of the government of the United States. The doctrines of strict construction, which had been the idols of the ruling party, looked far less attractive when invoked by New England against their own policies, and the Constitution, which Jefferson set aside, as he thought, to acquire Louisiana, became most elastic in the hands of those who had sought to draw its bands so tightly that the infant nation could hardly move its limbs. Mr. Calhoun, with his mind set on the accomplishment of the great purpose of freeing the United States from foreign aggression, and thus lifting it to its rightful place among the nations of the earth, did not shrink from the conclusions to which his purpose led. His mind was too clear and too rigidly logical to palter with or seek to veil the inevitable results of the policy he supported. As he wished the end, he was too virile, too honest in his mental processes, not to wish the means to that end. The war left a legacy of debts and bankruptcy, and in dealing with these problems it was Calhoun who reported the bill for a new Bank of the United States, who sustained the tariff of 1816, defended the policy of protection to manufactures, and advocated a comprehensive scheme of internal improvements.

Then it was that he declared in the House on the 31st of January, 1816, when he reported the bill setting aside certain funds for internal improvements, after urging an increase of the army, that —

As to the species of preparation . . . the navy most certainly, in any point of view, occupies the first place. It is the most safe, most effectual, and cheapest mode of defence.

In 1814 (*Annals of Congress*, p. 1965) he said in regard to manufactures that —

He hoped at all times and under every policy they would be protected with due care.

Two years later he returned to the subject as a part of his theory of the national defence and said:

In regard to the question how far manufactures ought to be fostered, it is the duty of this country, as a means of defence, to encourage its domestic industry, more especially that part of it which provides the necessary materials for clothing and defence. . . . The question relating to manufactures must not depend on the abstract principle that industry, left to pursue its own course, will find in its own interests all the encouragement that is necessary. Laying the claims of manufacturers entirely out of view, on general principles, without regard to their interests, a certain encouragement should be extended, at least to our woollen and cotton manufactures.

At the close of the same year, December 16, 1816 (*Annals of Congress*, 1816-17, pp. 853, 854), he said:

Let it not be forgotten, let it be forever kept in mind, that the extent of our republic exposes us to the greatest of all calamities, next to the loss of liberty, and even to that in its consequence — disunion. We are great, and rapidly — I was about to say fearfully — growing. This is our pride and danger, our weakness and our strength. Little does he deserve to be

intrusted with the liberties of this people who does not raise his mind to these truths. We are under the most imperious obligation to counteract every tendency to disunion. . . . If . . . we permit a low, sordid, selfish, and sectional spirit to take possession of this House, this happy scene will vanish. We will divide, and in its consequence will follow misery and despotism.

A little more than a month later, broadening his theme, to which he constantly recurred, and speaking of internal improvements (February 4, 1817), he said:

It is mainly urged that Congress can only apply the public money in execution of the enumerated powers. I am no advocate for refined arguments on the Constitution. The instrument was not intended as a thesis for the logician to exercise his ingenuity on. It ought to be construed with plain good sense; and what can be more express than the Constitution on this point? . . . If the framers had intended to limit the use of the money to the powers afterward enumerated and defined nothing could have been more easy than to have expressed it plainly. . . . But suppose the Constitution to be silent; why should we be confined in the application of moneys to the enumerated powers? There is nothing in the reason of the thing that I can perceive why it should be so restricted; and the habitual and uniform practice of the government coincides with my opinion. . . . In reply to this uniform course of legislation I expect it will be said that our Constitution is founded on positive and written principles and not on precedents. I do not deny the position, but I have introduced these instances to prove the uniform sense of Congress and the country — for they have not been objected to — as to our powers; and surely they furnish better evidence of the true interpretation of the Constitution than the most refined and subtle

arguments. Let it not be argued that the construction for which I contend gives a dangerous extent to the powers of Congress. In this point of view I conceive it to be more safe than the opposite. By giving a reasonable extent to the money power it exempts us from the necessity of giving a strained and forced construction to the other enumerated powers.

From the House of Representatives he passed to the Cabinet of President Monroe, where he served from 1817 to 1825 as secretary of war, showing high capacity as an administrator. He took the department avowedly as a reformer, for the lesson of our unreadiness and our lack of military preparation had been burned into his mind by the bitter experiences of the War of 1812. The army was reduced by Congress during his tenure of office, but organization, discipline, and efficiency were all advanced by his well-directed efforts.

In 1825 Mr. Calhoun was elected vice-president, and was re-elected four years later. In 1832 he resigned the vice-presidency to become senator from South Carolina. His resignation, followed by his acceptance of the senatorship, marks his public separation from the policies of his earlier years and the formal devotion of his life to the cause of states rights and slavery. The real division had begun some years before he left the vice-presidency. His change of attitude culminated in his support of nullification and in his bitter quarrel with Jackson, which was all the more violent because they were of the same race and

were both possessed of equal strength of will and equal intensity of conviction.

I have thus referred to the change in Mr. Calhoun's position solely because of its historical significance, marking, as it does, the beginning of a new epoch in the great conflict between the contending principles of nationalism and separatism. In his own day he was accused of inconsistency, and the charge was urged and repelled with the heat usual to such disputes. Nothing, as a rule, is more futile or more utterly unimportant than efforts to prove inconsistency. It is a favorite resort in debate, and it may therefore be supposed that it is considered effective in impressing the popular mind. Historically, it is a charge which has little weight unless conditions lend it an importance which is never inherent in the mere fact itself. If no man ever changed his opinions, if no one was open to the teachings of experience, human progress would be arrested and the world would stagnate in an intellectual lethargy. Inconsistency Emerson has declared to be the bugbear of weak minds, and this is entirely true of those who, dreading the accusation, shrink from adopting an opinion or a faith which they believe to be true, but to which they have formerly been opposed. Mr. Calhoun defined inconsistency long before the day when the charge was brought against him with that fine precision of thought which was so characteristic of all his utterances.



He said in the House in 1814:

Men cannot go straight forward but must regard the obstacles which impede their course. Inconsistency consists in a change of conduct when there is no change of circumstances which justify it.

Tried by this accurate standard, Mr. Calhoun is as little to be criticised for his change of position as Mr. Webster for his altered attitude in regard to the system of protection. With the new conditions and new circumstances both men changed on important questions of policy, and both were justified from their respective points of view in doing so. That Mr. Calhoun went further than Mr. Webster, changing not only as to a policy, but in his views of the Constitution and the structure of government, does not in the least affect the truth of the general proposition. The very measures which he had once fostered and defended had brought into being a situation which he felt with unerring prescience portended the destruction of the fundamental principles in which he believed and of a social and economic system which he thought vital to the safety and prosperity of the people whom he represented. The national force which he had helped to strengthen, the central government which he had so powerfully aided to build up, seemed to him to have become like the creation of Frankenstein, a monster which threatened to destroy its creators and all he

personally held most dear. It was inevitable that he should strive with all his strength to stay the progress of what he thought would bring ruin to the system in which he believed. Once committed to this opinion, he was incapable of finding a half-way house where he could rest in peace or a compromise which he could accept with confidence. His reason carried him to the inevitable end which his inexorable logic demanded, and to that reason and that logic he was loyal with all the loyalty of strong conviction and an honest mind. There is no need to discuss either the soundness or the validity of the opinions he held. That is a question which has long since passed before the tribunal of history. All that concerns us to-day is to recall the manner in which Calhoun carried on his long struggle of twenty-five years in behalf of principles to which he was utterly devoted. He brought to the conflict remarkable mental and moral qualities, deep conviction, an iron will, a powerful mind, an unsparing logic, and reasoning powers of the highest order. Burr said that any one who went onto paper with Alexander Hamilton was lost. Any one who admitted Mr. Calhoun's premises was lost in like fashion. Once caught in the grasp of that penetrating and relentless intellect, there was no escape. You must go with it to the end.

He fought his fight with unbending courage, asking no quarter and giving none. He flinched from no con-

clusion; he faced every result without change or concession. He had no fear of the opponents who met him in debate. He felt assured in his own heart that he could hold his own against all comers. But he must have known, for he was not a man who ever suffered from self-deception, that the enemies whom he could not overcome were beyond the range of argument and debate. The unconquerable foes were the powerful and silent forces of the time of which the great uprising of 1848 in behalf of political liberty was but a manifestation. The world of civilized man was demanding a larger freedom, and slavery, economically unsound, was a survival and an anachronism. Even more formidable was the movement for national unity, which was world-wide. It was stirring in Germany and was in active life in Italy. The principle of separatism, of particularism, was at war with the spirit of the time. The stars in their courses fought against Sisera, and Calhoun, with his keen perceptions, must have known in his heart that he was defending his cause against hopeless odds. But he never blenched and his gallant spirit never failed or yielded. When the crisis of 1850 came, Clay brought forward his last and most famous compromise, which was supported by Webster. The two Whig leaders were filled with dread as they contemplated the perils which at that moment menaced the Union and were ready to go far on the road of concession. Calhoun, then nearing his death, had

no faith in the compromise. He saw with that clearness of vision which nothing could dim that in the existing state of public thought, in the presence of the aspirations for freedom and national unity which then filled the minds of men throughout the world of western civilization, no compromise such as Clay proposed could possibly endure. He had his own plan, which he left as a legacy to his country. But his proposition was no compromise. It settled the question. It divided the country under the forms of law and made the national government only a government in name. The solution was complete, but it was impossible. Clay's compromise, as every one knows, was adopted. There was a brief lull, and then the mighty forces of the age swept it aside and pressed forward in their inevitable conflict.

I think Calhoun understood all this, which is so plain now and was so hidden then, better than either of his great opponents. If they realized the situation as he did, they at all events did not admit it. Clay, with the sanguine courage which always characterized him, with the invincible hopefulness which never deserted him, gave his last years to his supreme effort to turn aside the menace of the time by a measure of mutual concession. Webster sustained Clay, but with far less buoyancy of spirit or of hope. Thus, just sixty years ago, they all stood together for the last time, these three men who gave their names to an epoch in our history and who typified in themselves the tendencies of the

time. Before two years more had passed they had all three gone, and the curtain had fallen on that act of the great drama in which they had played the leading parts. It is a moment in our history which has always seemed to me to possess an irresistible attraction. Not merely are the printed records, the speeches that were then made and the memoirs then written, of absorbing interest, but the men themselves not only filled but looked their parts, which is far from common in the case of actors in the never-ending drama of humanity. They all look in their portraits as imagination tells us they should look, and I share the faith of Carlyle in the evidence of portraiture. Over the vigorous, angular, and far from handsome features of Henry Clay is spread that air of serenity and of cheerfulness which was one among the many qualities which so drew to him the fervent affection of thousands of men. We can realize, as we study his portrait, the fascination which attracted people to him, the charm which enabled him, as one of his admirers said:

“To cast off his friends as the huntsman his pack,  
For he knew when he pleased he could whistle them back.”

A gallant soul, an inspiring leader, a dashing, winning, impulsive nature, brilliant talents — I think one can see them all there in the face of Henry Clay. Turn to the latest portraits of Webster and Calhoun, and you pass into another world. They are two of

the most remarkable heads, two of the most striking, most compelling faces in the long annals of portraiture. They are widely different, so far as the outer semblance is concerned. The great leonine head of Webster, charged with physical and mental strength, the massive jaw, the eyes, as Carlyle said, glowing like dull anthracite furnaces beneath the heavy brows, seem at the first glance to have no even remote resemblance to the haggard face of Calhoun, with the dark, piercing, yet sombre, eyes looking out from cavernous orbits, the high, intellectual forehead, the stern, strong mouth and jaw, all printed deep with the lines of suffering endured in silence. But if we look again and consider more deeply we can see that there is a likeness between them. The last photographs of Webster, the last portraits of Calhoun, show us a certain strong resemblance which is not, I think, the mere creation of a fancy bred by our knowledge of the time. Both are exceptionally powerful faces. In both great intellect, great force, and the pride of thought are apparent, and both are deeply tragic in their expression. It is not the tragedy of disappointment because they had failed to attain the office which was the goal of their ambition. That was the shallow explanation of excited contemporary judgment. Personal disappointment does not, and cannot, leave the expression we find in those two faces. There is a "listening fear in their regard"; not a personal fear — they were too great for that —

but a dread because they heard, as other men could not hear, the hand of Fate knocking at the door. The shadow of the coming woe fell darkly across their last years, and the tragedy which weighed them down was the tragedy of their country. It was thus that Webster looked when, in the 7th of March speech, in the great passage on "peaceable secession" he cried out in agony of spirit:

What States are to secede? What is to remain American? What am I to be? An American no longer? Am I to become a sectional man, a local man, a separatist, with no country in common with the gentlemen who sit around me here, or who fill the other House of Congress? Heaven forbid! Where is the flag of the republic to remain? Where is the eagle still to tower? Or is he to cower and shrink and fall to the ground?

However Webster and Calhoun disagreed, they both knew that the Union could not be lightly broken. They knew the disruption of the States would be a convulsion. They foresaw that it would bring war, the war which Webster predicted, and they both turned with dread from the vision which haunted them.

We catch the same note in the words of Calhoun on March 5, 1850, when he declared, "If I am judged by my acts, I trust I shall be found as firm a friend of the Union as any man within it." Despite all he had said and done, he still clung to the Union he had served so long, and when as the month closed and he lay upon his deathbed the thought of the future, dark

with menace, was still with him, and he was heard to murmur: "The South! The poor South! God knows what will become of her."

So they passed away, the three great senators, and the vast silent forces which moved mankind and settled the fate of nations marched forward to their predestined end.

We do well to place here a statue of Calhoun. I would that he could stand with none but his peers about him and not elbowed and crowded by the temporarily notorious and the illustrious obscure. His statue is here of right. He was a really great man, one of the conspicuous figures of our history. In that history he stands out clear, distinct, commanding. There is no trace of the demagogue about him. He was a bold as well as a deep thinker, and he had to the full the courage of his convictions. The doctrines of socialism were as alien to him as the worship of commercialism. He "raised his mind to truths." He believed that statesmanship must move on a high plane, and he could not conceive that mere money-making and money-spending were the highest objects of ambition in the lives of men or nations.

He was the greatest man South Carolina has given to the nation. That in itself is no slight praise, for from the days of the Laurenses, the Pinckneys, and the Rutledges, from the time of Moultrie and Sumter and Marion to the present day, South Carolina has always



been conspicuous in peace and war for the force, the ability, and the character of the men who have served her and given to her name its high distinction in our history. But Calhoun was much more even than this. He was one of the most remarkable men, one of the keenest minds, that American public life can show. It matters not that before the last tribunal the verdict went against him, that the extreme doctrines to which his imperious logic carried him have been banned and barred, the man remains greatly placed in our history. The unyielding courage, the splendid intellect, the long devotion to the public service, the pure unspotted private life, are all there, are all here with us now, untouched and unimpaired for after ages to admire.

## THOMAS BRACKETT REED

IN the preface to his edition of Shakespeare, which is as entertaining as it is neglected, Doctor Johnson says in his finest manner: "The poet of whose work I have undertaken the revision may now begin to assume the dignity of an ancient and claim the privilege of established fame and prescriptive veneration. He has long outlived his century, the term commonly fixed as the test of literary merit."

I have often thought that if the period of time fixed by Doctor Johnson as the test of literary merit were applied in certain other directions, it might be productive of good results. For instance, if the lapse of a century were made the condition precedent for the erection of statues and monuments, we should not only be spared some painful works of art, but we should not have so many bronze figures which in much less than a hundred years require an explanation of their existence. Local pride, personal affection, and the first outburst of grief are not always safe guides in determining either literary merit or the permanent position of any man in the history of his time. In the first few months or years after a man's death it is difficult to get a true historical perspective, and the nat-

ural feelings of the moment are apt to distort our vision. These natural feelings, however, are not to be denied, and the temporarily distinguished will continue to receive their share of monuments, which in such cases ought certainly to be formed of material no more enduring than the fame of their subjects.

Yet, after all, these lasting memorials of the ephemeral are only a part of those which either decorate or cumber the earth. Many, perhaps most, would be erected even if Doctor Johnson's test of literary merit were strictly enforced. The instinct of humanity for the really great, for the man who has made an ineffaceable mark on the history of his time, who has done some worthy deed or rendered some lasting service, is generally sound and true when death has once set all things even. This is conspicuously the case with the statue of Mr. Reed which has recently been unveiled in Portland with appropriate ceremonies and with an excellent address by Mr. McCall, of Massachusetts.

Thomas Brackett Reed was not only a distinguished, but he was also a remarkable man — remarkable and unusual both in intellect and character. He left a deep mark on the history of his time, and he rendered a very great public service in rescuing the House of Representatives from the condition of helpless inanity into which it had fallen and by which the right of the majority to rule and the responsibility,

without which representative government must fail, had both been well-nigh destroyed. Rules devised originally to facilitate business and to give reasonable protection to the rights of the minority, which under the old and less crowded conditions were both suitable and unabused, had gradually been perverted until public business was at a standstill, and the power to arrest all action had passed to an irresponsible minority, a contradiction of the first principles of free government. Neither the evil nor the cure was peculiar to the United States. The House of Commons passed through the same ordeal and was rescued in the same way, with one important difference. In England the quorum of the Commons consists of forty members, so small a number that it was useless as a weapon for obstruction. With us a majority quorum is required by the Constitution, and refusing a quorum was the chief means of thwarting action. Mr. Reed met the difficulty by boldly counting those present to make a quorum whether they voted or not. It required nerve and courage to do it, and his action unchained a storm. He did not falter for a moment, and carried his point, destroying the chief stronghold of obstruction at a blow. He was right in common sense as well as legally and constitutionally. The Supreme Court sustained him, and he had the satisfaction of seeing his political opponents adopt his rules.

The fact was that the old parliamentary systems

in both England and the United States, which were adapted to simpler conditions of business, society, and politics, were not only outworn, but had become a menace to free government. Mr. Reed destroyed the evil and established a new system. He had the loyal support of all his party associates; but it was he who did it, he alone, and I know of no other man then in public life who could have done it. His great ability was well known, but the patience, the calm, unflinching courage, the force of character which he displayed through all those trying weeks and months, and which were less generally understood, compelled the admiration even of his opponents.

I followed and watched him through all that session of bitter conflict and stormy attack. Not only did he exhibit throughout the qualities I have mentioned, but, although he was capable of wrath and strongly combative, I never saw his good-nature fail or his ready wit turn, as it might well have done, to anger and fierce denunciation. I remember that, one evening, when obstruction had been employed for hours to prevent a vote, and everybody was tired and in a bad temper, I went up to the Speaker's desk and asked how long this business was to last. Mr. Reed, perfectly unruffled, turned around with a pleasant smile and said: "We shall get a vote in about an hour. Springer has only two more pieces in his repertoire."

My friend and colleague, the late Governor Green-

halge, in one of the many heated debates of that winter quoted Tennyson's famous lines, and never were they more aptly applied than when he referred to Mr. Reed as:

“One still, strong man in a blatant land,  
Whatever they call him, what care I,  
Aristocrat, democrat, autocrat — one  
Who can rule and dare not lie.”

Not only was he at that moment the “still strong man,” but he was then and always a man who “dared not” and could not lie either to himself or to others. No leader was ever more loyally followed by his party or more deeply respected by the House at large than was Mr. Reed; yet he never stooped to curry favor with the House nor did he hesitate to rebuke it. I remember well, on one occasion when he thought that the House was acting or was about to act in a cowardly manner, how he told them in the phrase of the weather bureau that he had never regarded the House as a “courage centre,” but that this special weakness went beyond all limits.

The reform of the rules was a great achievement, pre-eminently the achievement of a statesman of high order, who looked before and after. The word “statesman,” however, especially in connection with Mr. Reed himself, cannot be used without at once recalling his famous definition. I happened to sit next to him in the House, and he showed me the letter asking him to

define a statesman, and his reply, "A statesman is a successful politician who is dead." The epigram was published, flew over the country, and has become a familiar quotation. But the sequel is less well known. The correspondent who asked the question telegraphed as soon as he received the answer, "Why don't you die and become a statesman?" Mr. Reed handed me the telegram and said: "Here is my answer: 'No. Fame is the last infirmity of noble mind.'" It was extremely unsafe to enter with Mr. Reed upon the exchange of sallies and retorts, so beloved of Mrs. Wilfer's copper-plate engravers.

The first time I met him was in 1881, at Worcester. He had come to address our State convention, but the news of Garfield's death had just arrived, and it was felt that nothing should be done except the absolutely necessary business, and that, after adopting appropriate resolutions, the convention should at once adjourn. To Mr. Reed, who had come from Maine on our invitation to make a speech, the situation was a difficult one, but of course he assented to the wishes of the committee. I can see him now as he sat in the little anteroom, looking like a giant, and seeming to fill the room with his presence. His personality, both physical and mental, was so large and so powerful that when, in any connection or for any reason, I recall him or anything he said, I not only see him with the utmost vividness, but the whole scene rises in memory,

whether it was in the Capitol or in a house, on the street or in the country, in a crowd or in solitude, that the incident occurred. Memory is dominated by that commanding figure and by the sense of power and force which went with it.

After that first meeting, I met Mr. Reed from time to time, and in 1884 I recall coming across him one day in State Street just after the nomination of Mr. Blaine. The break in the Republican party had begun, and I asked Mr. Reed what he thought of the outlook. "Well," he said, "it is a great comfort to think that the wicked politicians were not allowed to pick the candidate and that the nomination was made by the people. The politicians would have been guided only by a base desire to win."

After this chance meeting I saw Mr. Reed more and more frequently until I went to Congress in 1887, and then I was in his company every day and became not only intimate with him, but very fond of him; for he was capable of inspiring the warmest affection in the friends to whom he was attached. The general public, which fully recognized Mr. Reed's great intellectual force, which delighted to repeat his witticisms, and which rejoiced in his powers in debate and in seeing him overwhelm his antagonists, did not realize, I think, and perhaps it was impossible that they should realize, the warmth of his affection, the loyalty of his nature, and the tenderness and sympathy shown not only to those



for whom he cared, but for all who sorrowed or were heavy-laden. I have no doubt that these qualities which were so apparent to me were hidden to the world by the reserve characteristic of the race from which Mr. Reed sprang — a race which shrinks from any easy or noisy display of emotion, but whose feelings are perhaps deeper and stronger because habitually repressed.

For Mr. Reed was a typical New Englander in the fullest sense of the word. He was typical in every way, in his intellect, in his character, in his reserve, in the depth of his feelings, and in his independence of thought and action. He came rightly by it, for he was of pure New England stock. He was a lineal descendant of George Cleve, or Cleaves, the first settler in the Portland region, and took a keen delight in that old Puritan's troubles with the constituted authorities.

He was born, brought up, and educated in Maine, and was as representative of his State as he was of his race. I believe the house in which he was born still stands. At all events, it was in existence not long ago, and while he was Speaker some one sent him a photograph of it. His secretary and successor in Congress, Mr. Allen, brought it to him and said, "That's a pretty good house to have been born in."

Mr. Reed looked at it and said, "Yes, Amos; but, you see, I was not born in all that house," pointing to an addition made since his time.

"Even then," said Mr. Allen, "it is a pretty good house to have been born in."

"Yes," said Mr. Reed, "but still I was not born in more than two or three rooms of it."

There, in the city of his birth, he went to school, and thence to Bowdoin College, and then after a year or two of teaching he entered the navy for service in the Civil War. When the war ended he betook himself to California with a vague plan of settling in that new country. He used to tell with intense delight of his examination for admission to the bar of California. A young Southerner came before the judge for examination at the same time. The judge asked the Southerner if the legal-tender acts were constitutional, and the young man answered without a moment's hesitation, "No." Then the judge turned to Mr. Reed and asked him the same question. Mr. Reed with equal promptness answered, "Yes."

"Very well," said the judge, "you are both admitted. Two men who can answer that question without hesitation ought to be admitted to any bar."

Mr. Reed did not remain long in California. He returned to Maine, began the practice of the law in Portland, rose rapidly to the front rank of his profession, became attorney-general, and in 1876 was elected to Congress from the Portland district. He had been ten years in Congress when I became a member, and was the recognized leader of the Republican minority.

On the first day after we had been sworn in, the usual drawing for seats took place. I was standing beside Mr. Reed behind the rail, and we waited patiently while all the names seemed to be called out except ours. It was painfully evident that we should be among the last and should draw very poor seats. I said to Mr. Reed that our luck seemed pretty bad. "Yes," he said, "the great trouble with this system is that it is so diabolically fair."

Not long afterward, in the allotment of committee places, I found myself a member of the Committee on Elections. We began at once to report our findings, and one day when we had called up a case Mr. Reed came into the House and happened to ask me what was going on. I said, "An election case," and started to explain it. "No explanation is necessary," said Mr. Reed; "the House never divides on strictly partisan lines except when it is acting judicially."

For six years I served with Mr. Reed in the House, and during that time he was for four years the leader of the minority and for two years Speaker. He was easily the greatest parliamentary leader I ever saw. I fully appreciate the truth of Emerson's doctrine of the force of understatement, but I cannot express my own belief in regard to Mr. Reed without also saying that in my opinion there never has been a greater or more perfectly equipped leader in any parliamentary body at any period. This conviction has only deepened

with time and it seems to me now, when the contests in which he engaged have long since passed into history, that Mr. Reed possessed in the highest degree all the qualities necessary for leadership in a great representative body controlled by the party system, which is common to this country and to Great Britain.

In the first place, he was a master of parliamentary practice. He not only knew thoroughly the complicated rules of the House, but, what is even rarer, he was equally master of general parliamentary law and understood, as very few men do, the theory and philosophy of the system. His mind was at once acute and broad. Acuteness will make a man very effective on the countless points which arise from a complicated system of procedure, but mere acuteness is not enough to constitute a great parliamentarian. There must be in addition a knowledge of general parliamentary law and a full understanding of the fact that the system is not a haphazard collection of precedents, but that it rests upon broad principles, and aims at well-defined objects. These conditions Mr. Reed fulfilled in the largest measure, and it was his complete mastery of the whole science, as well as his intimate knowledge of the rules, which enabled him to carry through his great reform. It was essential to his success that the House should have no doubt of the fact that no one on the floor was the equal of the chair in dealing with a question of parliamentary law. It was in the chair

therefore that his powerful grasp of the subject and his immense knowledge came fully into play, for as leader of the minority he had no taste for obstruction or for making petty points which are such irresistible temptations to the sharp but small practitioner. Yet although he did not indulge in little points himself, he fought in the minority as he did in power against any abuse of the rules, and he resented strongly any effort to achieve a partisan advantage by an improper ruling. Such efforts roused his indignation not merely from party interest, but because he could not endure violations of the general principles upon which all parliamentary law rests.

One day in a parliamentary discussion some one cited a ruling and attributed it to Mr. Carlisle, for whose eminent abilities both as a lawyer and as a parliamentarian Mr. Reed, like all the rest of us, had the highest respect. Mr. Reed at once rose. "That ruling," he said, "was not made by the Speaker. When the Speaker permits such a ruling as that to be made, he yields the chair to the gentleman from Illinois. He has too much respect for the rules of this House and for parliamentary law to make such a ruling himself."

But it was as a leader in debate that Mr. Reed was at his best. He was the finest, the most effective debater that I have ever seen or heard. His readiness was very remarkable. I never saw him at a loss. He

had a greater power of stating a case unanswerably in a few words than any man I have ever known. His presence of mind never failed, and I do not recall an occasion when he was obliged to explain or retreat from a position suddenly taken, a mishap which may happen to the best and most competent of leaders. With his exceptional capacity for terse, forcible, and lucid statement was joined the unrivalled power of retort for which he was famous. His mind worked with astonishing rapidity, and his natural originality of thought enabled him always to take the unexpected in an unexpected way. When he stood up, waiting for an opponent to conclude, filling the narrow aisle, with his hands resting upon a desk on each side, with every trace of expression banished from his face, and looking as if he had not an idea and hardly heard what was being said, then was he most dangerous. Then I knew that, like Lord Thurlow, who was said, when he rose from the woolsack, to have looked like Jove when he grasped the thunder, Mr. Reed was ready to launch a bolt which would make its victim remember that day's battle with lasting regret. The House of Representatives, like the House of Commons, loves and follows the man who shows it sport, and that Mr. Reed never failed to do. Whether it was the condensed, lucid statement to which it was an intellectual pleasure to listen, or fun in which he abounded, or ridicule of which he was past master, or wit and sarcasm which

cut and scarred when it fell like the lash of a whip, the House was never disappointed and was well aware of the fact. One of his retorts, so well known that it is a household word, illustrates his quickness as well as any other. Mr. Springer, of Illinois, was declaring with large and loud solemnity that, in the words of Henry Clay, "he had rather be right than be President." "The gentleman need not be disturbed," interjected Mr. Reed, "he never will be either." Hardly a day passed that a repartee of this kind did not fall from his lips, and they belonged to that small class of witty retorts which cannot in the nature of things have been prepared and which fly out on the spur of the moment like the sparks from an anvil.

He was particularly strong in debate under the five-minute rule, which puts a debater's powers to the severest test. To make a point and an effective statement in five minutes demands much skill. Mr. Reed had himself a perfect conception both of the difficulties and opportunities of the five-minute debate. I remember his saying to my friend John Russell of my own State, a very clever and most delightful man: "Russell, you do not understand the theory of five-minute debate. The object is to convey to the House in the space of five minutes either information or misinformation. You have consumed several periods of five minutes this afternoon without doing either."

Mr. Reed, like most men of vigorous nature, was a

strong partisan, and in the conflicts of party he was very formidable, for his attacks upon his political opponents were severe and always pushed home. But what stirred his wrath was anything which seemed to him mean or underhand. He was a good hater and he detested shams, humbug, and pretence above everything else. If he saw these qualities in a man, he was unforgiving. There was a Democratic member conspicuous in my time who, in Mr. Reed's opinion, came within this class. He was a large, fine-looking, and distinctly able man. It was said that he was unscrupulous politically, and he was certainly a dangerous antagonist. He spoke with an affectation of great frankness and honesty, and he was very fond of the words "candor" and "candid," which gave especial offence to Mr. Reed. They had many encounters, and, able as our "candid" friend was, he was always worsted. I was standing by one day when he came over and expostulated with Mr. Reed on his severity, which led only to a frank expression of Mr. Reed's opinion of him and his methods. At last this member died and in due time was eulogized in both Houses. Just after the eulogies, some friends of mine came to Washington from Boston, and I invited Reed and McKinley and some others to meet them at dinner. The conversation turned on the subject of the recent eulogies. Mr. Reed gave his opinion and account of the deceased member in his usual incisive way, and then said:



“There are those who believe that the spirits of the departed are all about us. I trust the spirit of —— is here to-night, for I should like him to hear once more the opinion of him and his performances which I have so often expounded to him in public and private during his life.”

The wit and humor were not carefully kept for public display or for the exigencies of debate. Mr. Reed did not lay his “good things” aside for use only in public. They came as readily and generously in private and in talk with a single friend. I remember one which illustrates the readiness that never failed, and which I will venture to repeat.

It was after a dinner-party. The conversation had turned on gambling and betting. Mr. X said: “It is a curious thing, perhaps, but I never made a bet on a horse, a card, or anything else in my life.”

To this a senator replied with great earnestness: “I wish I could say that.”

“Why can’t you?” asked Mr. Reed. “X did.”

There was no one Mr. Reed respected more than Mr. X, but that could not stay the jest.

Yet it would be a great misconception of Mr. Reed to suppose that the deep humor and the quick wit for which he was famous were his chief attributes, or that they were used merely to bring laughter or to furnish a telling retort in debate or conversation. They were only two of the weapons in his large intellectual ar-

mory, and, if the most frequently used, were by no means the most important. He could truly have said with Doctor Holmes:

“While my gay stanza pleased the banquet’s lords,  
My soul within was tuned to deeper chords.”

In addition to the power of orderly, effective, unanswerable statement of a proposition, he could make a great argument on a great subject. He rose to the heights in the denunciation of wrong or wrong-doing and in the advocacy of what he believed to be right. In his long speeches, of which he was very sparing, the humor, the sarcasm, and the wit were all present, flashing out and illuminating his subject, but they went deeper than laughter, and carried profound reflection with them.

In the course of his speech closing the debate on the Mills Bill, May 19, 1888, for the Republican side, he said:

After all, this exaggerated idea of the profits of manufacturers is at the bottom of the chairman’s feelings. Whenever I walk through the streets of that democratic importing city of New York and look at the brownstone fronts my gorge always rises. I can never understand why the virtue which I know is on the sidewalk is not thus rewarded. I do not feel kindly to the people inside. But when I feel that way I know what the feeling is. It is good, honest, high-minded envy. When some other gentlemen have the same feeling they think it’s political economy.

Here is an apt illustration not only of his wit but the more penetrating touch which in a sentence uncovers a common foible of human nature.

A little later in the same speech occurs another passage which I will give in full because it is such an excellent illustration of Mr. Reed's power of ridiculing with all the resources of rhetoric a sham which he hated and which his illustrations and similes exposed by the law of contrasts:

"Monopoly," said Horace Greeley, a doctor of laws, and once a candidate of the Democratic party for the presidency, "monopoly is, perhaps, the most perverted and misapplied word in our much-abused mother tongue." How very tame this language is. I suppose that during the ten years last past I have listened in this hall to more idiotic raving, more pestiferous rant on that subject than on all the others put together. And yet I do not regret it. What a beautiful sight it is to see the revenue-reform orator go into action against monopoly. Nelson, as he stood blazing with decorations on the decks of the *Victory* on the fatal day of Trafalgar; Napoleon at Friedland, as the Guard went cheering and charging by; Thomas Sayers, as he stripped for the championship of England when Heenan had crossed the lifting waters; the eagle soaring to his eyrie; the royal man-eating Bengal tiger in his native jungle; nay, the very bull himself, the strong bull of Bashan, as he uplifts his bellow over the rocky deserts of Palestine, are all but pale reminders of one of these majestic creatures. And yet, outside the patent office, there are no monopolies in this country, and there never can be. Ah, but what is that I see on the far horizon's edge, with tongue of lambent flame and eye of forked fire, serpent-headed and griffin-clawed? Surely it must be the great new chimera "Trust." Quick, cries every masked

member of the Ways and Means. Quick, let us lower the tariff. Let us call in the British. Let them save our devastated homes. Courage, dear brethren. Be not too much disturbed. The Lord will reign even if the board of mayor and aldermen should adjourn.

One other instance of the deeper note which his wit and humor so often struck will suffice. In an article about the tariff he spoke of the attraction which free trade offers because it presents a number of convenient aphorisms, and people like to feel that they have truth in a nutshell and can take it out and look at it and think that truth is simple. "The fact is," he continued, "that half-truths are simple, but the whole truth is the most complicated thing on earth." There the epigram strikes at the root of things and conveys a real philosophy.

One other instance occurs to me which shows his power of illustration as well as the capacity for epigram. We had been hearing a great deal from the free-trade side of the "survival of the fittest" and the folly of attempting to set aside the great natural law by statute. Mr. Reed referred to this in his reply and said (I quote from memory):

Gentlemen are fond of talking about "the survival of the fittest," but they never complete the sentence. It is not the abstractly fittest who survive. The sentence really is, "the survival of the fittest to survive"; that is, the fittest for a given environment. If you cast a minnow and the magnificent bull

of Bashan into the Atlantic Ocean, there is no question which is the nobler organism, the abstractly fittest, but the great bull of Bashan will perish and the minnow will survive in that environment.

The fact was that Mr. Reed had a mind of remarkable originality. He not only was an eminently independent thinker and a very strong and sound one, but he thought in his own way and framed his conclusions in a manner peculiar to himself. Every fact, every occurrence, important or unimportant, common or uncommon, was returned or reflected from his mind at an angle quite different from that of other people. A very trifling incident will illustrate my meaning. He came one day to lunch with me in the Senate restaurant. We sat down in a cramped space at a very small table. In compressing himself into the corner, he overturned a glass, and the ice which it contained fell out on the floor. He picked up the glass, and, looking at me with his quizzical expression, said: "I don't care. It isn't my ice." There was nothing of consequence in either incident or remark, but the mental process and the angle of reflection were entirely different from those of other people.

Another little story that comes to my mind illustrates these same qualities. A member of the House who was also a warm friend of Mr. Reed was sitting one day at his desk with his legs and feet extended into the aisle. The Speaker came up the narrow path

and my friend said, moving as he spoke, "Let me get out of your way, Mr. Speaker." Reed looked down and said, "One will do," and passed on.

I should like to say much of Mr. Reed as a great political leader and constructive statesman outside of Congress, as well as in the House. I should like especially to say something of him when he was a candidate for the presidency. I supported him as strongly as I could, and had the honor of presenting his name to the convention at St. Louis. I was familiar with all the incidents of his candidacy, and I know how he declined to promise offices from the cabinet down or to spend money to secure Southern delegates. He lost the nomination, but he kept his honor pure and his high conception of public duty unstained and unimpaired. Unfortunately, the limits of space compel me to confine myself to this inadequate attempt to give an impression of him simply as the parliamentary chief, the leader and Speaker of the House, where his greatest fame was won. Yet I cannot close without a word about him as a man. He was many-sided; a great reader, deeply versed in English literature, and also in the literature of France, especially old France, upon which he used to work at night with a teacher in the busiest times of an exciting session. He was a lover of art and natural scenery and knew much of both. He liked to travel both at home and abroad, wandering about in cities and

watching the people, for he was a close observer and always learning. No more agreeable companion ever lived. Like Doctor Johnson, he loved to sit and have his talk out, and no one was ever better to listen to or a better listener, for his sympathies were wide, his interests unlimited, and nothing human was alien to him. With the friends he cared for, and he was himself the most loyal of friends, he would sit or walk by the hour, talking of everything; the talk was always fresh, keen, and suggestive, and the great, hearty, contagious laugh would come at intervals and carry every one with it.

To those who knew him best and loved him most it is sad to speak of him as a figure in history, sadder still to think that the great nature, the wit, the humor, the sympathy, the deep laughter, the honest indignation, are now only memories.

## AN AMERICAN MYTH

EVERY one who has studied history is familiar with the myths which crowd its pages. I do not mean by this the frankly mythical tales which tell of gods and goddesses, of the divine founders of nations, tribes, and families, or those in which the Middle Ages delighted and which were replete with angels and devils, with witches and sorcerers, with magic and miracles. The myths to which I refer are those which masquerade as history, which are modern as well as ancient, which make no pretence to the supernatural, but which, being either pure invention or a huge growth from some little seed of fact, possess all the characteristics of their great namesakes which have rejoiced the world for centuries, awakened almost every emotion of which the human heart is capable, and from which the historian and the man of science have been able to learn innumerable lessons as to the thoughts and beliefs, the hopes and fears, of primitive man. These historical myths grow up silently. Some of them reign unquestioned for centuries. Modern research has exposed many of ancient lineage and long acceptance, has torn away the mask and revealed them in their true character. Yet the historical myth rarely dies.



No exposure seems able to kill it. Expelled from every book of authority, from every dictionary and encyclopædia, it will still live on among the great mass of humanity. The reason for this tenacity of life is not far to seek. The myth, or the tradition, as it is sometimes called, has necessarily a touch of imagination, and imagination is almost always more fascinating than truth. The historical myth, indeed, would not exist at all if it did not profess to tell something which people, for one reason or another, like to believe, and which appeals strongly to some emotion or passion, and so to human nature itself. Thus the historical myth not only defies its enemies who are interested in the truth about the past, but it springs up and comes to maturity in these present days even under the full and relentless glare of the searchlight of science or beneath the microscope of the antiquary. It is so hardy that it withstands the examination of the scientific historian and of the student and writer of history.

Sometimes the historical myth is mischievous, perverting or inventing important facts on which history turns and by which judgments are made up and conclusions drawn. In such cases too much pains cannot be expended in its destruction. But in most cases the historical myth is harmless except upon the general consideration that all historical falsehoods are bad, both great and small, and that truth ought to pre-

vail, for, mighty as truth is, the assertion of the motto that it will prevail, however agreeable in theory, is open to some doubt in practice.

To illustrate the ordinary variety of historical myths we need not go farther than the life of Washington. The youthful conversations of our first President with his father, the undiluted invention of the veracious Weems, have been shattered again and again, but they live on in the popular mind, and nothing can extirpate them. The masterly statesmanship which by the Jay Treaty sacrificed the French alliance in order that the British posts which arrested our advance and threatened our independence might be removed is little known and less appreciated. But every child has heard of the flat and fatuous moralities which Weems stole from Beattie and with his own improvements foisted upon the great leader of the Revolution. Washington was never a marshal of France, and there is no evidence that he was ever given a sword by Frederick the Great. Yet both stories have been widely believed; both crop up from time to time, are roundly defended, and then sink down, only to rise again, as smiling and as false as they were in the beginning.

The little myth with which I propose to deal here is even more unimportant than those I have just cited as examples of the tribe. But the process of its growth can be traced with singular exactness (which is seldom the case), and the processes of development are just

as characteristic in a small myth as in a large and important one, and therefore equally instructive and equally serviceable in teaching us how to recognize the falsehood in history, how to weigh historical evidence, and how to reach the truth, as nearly at least as is possible to mere finite understandings. The historical myth whose growth and fortunes I am about to trace has one distinct advantage. It is not only connected with a great man and his notorious opponent, but it is also involved with an unsolved murder case, and, as Marjorie Fleming wisely said, "the history of all the criminals as ever was hanged is amusing." The case also gives some glimpses of society a hundred years ago which afford queer contrasts with the manners and habits of the present time. Moreover, I have a personal interest in the tale, for, confession being good for the soul, I must admit that I am in this case one of that numerous class who accept a myth without sufficient investigation, add to it the weight of their acceptance, be it much or little, and then pass it on, as I did in this instance.

On December 22, 1799, a young woman named Gulielma Elmore Sands, familiarly known as Elma Sands, left her home in Greenwich Street near Franklin Street in the city of New York, and did not return. Two days later, on the 24th of December,<sup>1</sup> a muff

<sup>1</sup> See testimony of Andrew Blanck in Coleman's Report, p. 53, also p. 29.

which she carried was found by a boy in or near the Manhattan Well, which was situated in Lispenard's Meadow, at a point now reached by an alley running from Greene Street and not far from Spring Street. Curiously enough, this clue was not followed with any energy until a week later, when the body was recovered, on January 2, 1800. There were marks indicating that the unfortunate girl might have received rough treatment, but the tears in the dress and the bruises and abrasions were not of a conclusive character. The body was taken from the well to the house of Mr. and Mrs. Ring, distant relatives with whom Elma Sands had lived, and was there laid out for some three days, and on one day was exposed to public view in the street, when crowds came for the purpose of looking at it.<sup>1</sup>

To exhibit the body of a murdered person in the street seems strange to us, especially as there was no question of identification, and is an instance of the contrasts between the manners of a century ago and the present day. Whether this was a common occurrence it is not possible to say with complete assurance, but it is certain that neither the witnesses nor anybody else spoke of it as strange or shocking. Doctor Hosack, a leading physician of New York, seems to have gone to look at the body out of mere curiosity and quite as

<sup>1</sup> See testimony of Doctor Hosack, and also that of Joseph Watkins, p. 74, Coleman's Report.

a matter of course. Such an exposure now in a public street is unimaginable.

In this particular case the custom may have been seized upon with especial avidity, for the disappearance of the girl had produced a great deal of excitement, which rose to fever heat after the finding of the body. Here, again, we come upon some odd differences between that time and this. The newspapers granted little space and no headlines to the crime, an ample proof of their utter inferiority to those with which we are blessed to-day, which give columns and pictures and staring capitals even to the vulgarest and most uninteresting of criminals and crimes. In another way the conduct of the newspapers in New York in the year 1800 was even more pitiful. Not only did they refrain from efforts to influence and mislead the people, but they actually deprecated attempts to prejudice the case, and intimated in a poor-spirited way that an accused man of good character was entitled to a fair trial. For by this time there was an accused. On January 6 the Grand Jury brought in a verdict of "Murder by a person or persons unknown," and four days later indicted Levi Weeks, a young builder and carpenter of excellent character and standing, as the murderer. Weeks was the popular selection, and suspicion had turned toward him with some reason. He had been the girl's lover, very intimate with her, as appeared by the testimony, where it was

also in evidence that he was not the only fortunate person in this respect. The public promptly determined that he was guilty, although the newspapers, with singular indifference to their duty, did nothing in this direction, and therefore other means were employed to influence public feeling against the prisoner. Handbills were circulated attacking the accused and casting suspicion upon him, and, what was still more singular, these handbills told of the appearance of ghosts and goblins and dancing devils at the well and in the prison. This appeal to the supernatural is another glimpse of the queer differences between that time and this, one of those sharp contrasts in feelings and beliefs among the people which history rarely records and which are revealed only by a study of some contemporary document full of petty details like this once notorious but now forgotten trial for murder.<sup>1</sup>

Yet, however strange goblins and ghosts may appear to us as a means of directing popular anger against a man accused of murder, they had, so far as we can judge, an immense effect in the city of New York in the year 1800. So far as the people were concerned, Levi Weeks was tried and found guilty. Fortunately for him, there was no referendum for a case like this, although that improvement in the criminal law may yet be bestowed upon us. If there had been, his shrift

<sup>1</sup> For handbills see testimony in the case. The best account of them is in the Introduction to Hardie's report of the trial, p. v.

would have been short, because in that simpler time there was no opposition to capital punishment and no sentimentality about criminals. Indeed, with an odd perversity which may well seem remarkable to us, popular sympathy then went out to the murdered and not to the murderers.

Thus it came about, despite the public clamor and excitement, that Levi Weeks, in due course, was brought to trial on March 31, 1800. The court, which sat in the building at the corner of Wall and Nassau Streets, where the Sub-Treasury now stands, was composed of Chief Justice Lansing, Richard Varick, the mayor, and Richard Harrison, the recorder. The prosecuting officer was Cadwallader Colden, assistant attorney-general. The counsel for the defence (and their names explain the appearance of this trial in history) were Alexander Hamilton, Brockholst Livingston, and Aaron Burr. They were all leading lawyers at the bar; one of them had been secretary of the treasury, was a general in the army, and the leader of the Federalist party; another was a leader in the Democratic or (as it was then called) Republican party, and was on the eve of becoming vice-president of the United States.

It would be interesting to follow the trial in detail, for the crime was a striking one, and the examination of the witnesses, as always, presents many pictures of life, and is full of the attraction which abides in the

revelations of the motives, passions, and weaknesses incident to human nature. But an analysis of the trial is not my purpose, and space forbids that I should do more than sum up the result. The trial lasted two days and practically two nights. The newspapers comment on its length, and Hardie in his preface speaks of it as the most lengthy trial ever known. When one thinks of the interminable criminal trials which now disgrace our courts with their vast expenditure of money and frequently with a defeat of the ends of justice, one cannot but feel that we have, in one respect, at least, sadly degenerated from the standards of our ancestors one hundred years ago.

At the close of this "most lengthy" trial Levi Weeks was acquitted, the chief justice charging in his favor and the jury remaining out only four minutes. To any one who reads the report it is obvious that no other verdict was possible. The prosecution failed to show that Weeks had gone out with Elma Sands on the 22d of December, and the defence proved an alibi for Weeks on that evening so complete as to put any participation in the murder on his part practically beyond the bounds of possibility.

This brings us to the story connected with the trial which has carried it into history and which has assumed the dimensions of a well-established myth. In 1858 Mr. James Parton published his life of Aaron Burr, and on page 148 he gave the following account



of an incident which occurred, as he states, in the course of the Weeks trial:

He [Colonel Burr] used to say that he had once saved a man from being hanged by a certain arrangement of the candles in a courtroom. He referred to a trial for murder in which both Hamilton and himself defended the prisoner, and which excited intense interest at the time. At first the evidence against the prisoner seemed conclusive, and I think Burr himself thought him guilty. But as the trial proceeded, suspicions arose against the principal witness. Colonel Burr subjected him to a relentless cross-examination, and he became convinced that the guilt lay between the witness and the prisoner, with the balance of probability against the witness.

The man's appearance and bearing were most unprepossessing. Besides being remarkably ugly, he had the mean, down look which is associated with the timidity of guilt. Hamilton had addressed the jury with his usual fluent eloquence, confining his remarks to the vindication of the prisoner, without alluding to the probable guilt of the witness. The prosecuting attorney replied, and it was now Burr's province to say the last word for the prisoner. But the day had worn away, the court took a recess till candle-light. This was extremely annoying to Colonel Burr, as he meditated enacting a little scene, to the success of which a strong light was indispensable. He was not to be balked, however. Through one of his satellites, of whom he always had several revolving around him, he caused an extra number of candles to be brought into the courtroom, and to be so arranged as to throw a strong light upon a certain pillar, in full view of the jury, against which the suspected witness had leaned throughout the trial. The court assembled, the man resumed his accustomed place, and Colonel Burr rose. With the clear conciseness of which he was master, he set forth the facts which bore against the man, and then, seiz-

ing two candelabra from the table, he held them up toward him, throwing a glare of light upon his face, and exclaimed:

“Behold the murderer, gentlemen!”

Every eye was turned on the wretch's ghastly countenance, which, to the excited multitude, seemed to wear the very expression of a convicted murderer. The man reeled, as though he had been struck; then shrunk away behind the crowd, and rushed from the room. The effect of this incident was decisive. Colonel Burr concluded his speech, the judge charged, the jury gave a verdict of acquittal, and the prisoner was free.

It will be observed that Mr. Parton gives no authority whatever for any of the statements in the passage just quoted. When I wrote my biography of Hamilton, more than twenty-five years ago, I rejected the Parton account of the supposed incident because on the very face of his statement the whole tale appeared so utterly improbable. For example, he says that he arranged the candles so as to throw a strong light upon a certain pillar where the witness was standing. The witness, Croucher, being no longer on the stand, had nothing to do but to step to one side and get out of the light. Again, Burr was a good lawyer, and he never would have made such a speech as Parton described, and would have been stopped by the court if he had tried to do so. These are but two of the points which a casual reading discloses, but when we put Mr. Parton's account beside the shorthand report of the trial the result is really startling. He says that Croucher was the principal witness; he was not. Mrs.

Ring was the principal witness, and there were others much more important than Croucher. He says that Colonel Burr subjected Croucher to a relentless cross-examination. The cross-examination of Croucher as reported in shorthand was neither long nor very serious, and there is no evidence that Burr conducted it. He says, "Hamilton had addressed the jury with his usual fluent eloquence." Hamilton never addressed the jury at all. He says, "It was now Burr's province to say the last word for the prisoner." This statement that Burr spoke in closing after the prosecuting officer was one of the assertions that made Mr. Parton's account unbelievable even without examination, but, as a matter of fact, there were no closing speeches. Burr, as the junior counsel, opened the case for the defence. It was a very good speech, in which he made some legal points and insinuated in a very guarded manner that the real culprit must be found among the witnesses, but there is not a word in that speech in the least resembling those which Parton attributes to Burr. After the evidence was all in, Burr read to the jury an extract from Hale's Pleas of the Crown, and that was all he did. The fact is that Parton's account was pure invention, and there is no indication that he ever read a report of the trial, for if he had, then what he said would have been, of course, a simple falsification of the record.

Three years later, in 1861, Mr. John C. Hamilton

published his life of his father, which he called a History of the Republic of the United States. On pages 745 to 747, in Volume VII, he gave his account of the alleged incident in the Weeks trial. It is as follows:

An occurrence had taken place which greatly excited the sympathies of the inhabitants of the city of New York. The body of a female was found in a public well, and a young mechanic of reputable character, who had been her suitor, was suspected of and indicted for the murder. Hamilton was engaged to defend him. A careful investigation left no doubt in his mind of the innocence of the accused, and his suspicions fell upon a principal witness for the prosecution. But the public feeling had been artfully directed against his client, and to overcome its passionate prejudices was a herculean task. The office of defending him was rendered invidious, and, fearing that his talents would rescue the destined victim from their grasp, Hamilton, when he appeared in the court of justice, was regarded by the multitude, in this, the only time of his life, with a dark and sullen animosity. He resolved not merely to secure the acquittal of his client but to place his character beyond all just suspicion.

It would, in this view, be a great victory so to operate on the jury in the progress of the evidence as to supersede the necessity of summing up the case. To this object he bent all his efforts. The evidence was circumstantial with the exception of that of the witness who, Hamilton felt convinced, was the criminal. After an exertion of all his logical powers in disentangling the web which had been wound around the accused, and in showing that the crime must have been perpetrated by another hand, the suspected witness was called to the stand. On his evidence the verdict would turn. The prolonged trial had extended far into the night; and when Croucher was sworn Hamilton advanced, placed a candle on each side of his

face, and fixed on him a piercing eye. This was objected to; but the court declared the extraordinary case warranted this procedure. Hamilton then remarked, in the deepest tones of his voice: "I have special reasons, deep reasons, reasons that I dare not express — reasons that, when the real culprit is detected and placed before the court, will then be understood." The audience bent forward in a breathless anxiety, every eye turning from the prisoner to the witness, when Hamilton exclaimed: "The jury will mark every muscle of his face, every motion of his eye. I conjure you to look through that man's countenance to his conscience." Having thus fixed the impression, he pressed in a close examination the conscience-stricken culprit, who plunged on from one admission to another, from contradiction to contradiction. The evidence closed. As Croucher withdrew from the stand the spectators turned away from him with horror; and the jury acquitted the young mechanic without rising from their seats. Doubts still hung over the accused, but the subsequent conviction of this witness of an execrable crime left little question of the justice of Hamilton's suspicions.

I accepted the Hamilton story in my biography, as did Mr. John T. Morse in his life of Hamilton, published some years before mine. The Hamilton version on its face, unlike the Parton version, had nothing obviously absurd or contradictory. Hamilton is there represented as placing the candles on each side of the witness while he was on the stand and could not move, and the absurdity of winding up the case with a government witness on the stand could be set down to the fervor of the narration and to the writer's habitual inaccuracy. But when we put the Hamilton account

beside the shorthand report, it does not fare very much better than the inventions of Mr. Parton. In the first place, Mr. John C. Hamilton omits entirely to say that Hamilton had with him as associate counsel Livingston and Burr. In the second place, there is no evidence that Hamilton conducted the cross-examination of Croucher. One of the three counsel for the prisoner cross-examined him, but the report of the trial does not tell us which one it was. As I have already said, the cross-examination as reported was sufficient but not serious, and there is not a trace of anybody's putting candles near him at that time, nor is there a word resembling those which Mr. John C. Hamilton attributes to his father. As the shorthand report carefully mentions the occasion when the candles were used, it is fair to suppose that no such incident as that described by John C. Hamilton occurred when Croucher was cross-examined. The account of the cross-examination is imaginary, and so, of course, is the part about Croucher withdrawing from the stand and the spectators turning away from him with horror.

In 1872 Mr. William Stone, in his *History of New York City*, adopted the Parton story, with certain modifications to make it less impossible of belief, but gave no authorities for his version of the incident. In the same year Mr. Edward S. Gould published an article in the May number of *Harper's Magazine* entitled *The Manhattan Well Murder*. The article

was devoted to the murder and to the trial, which Mr. Gould considered a miscarriage of justice, and he refers only in passing to the incident of the candles. Mr. Gould says that he had before him a manuscript report of the trial in Hamilton's handwriting, and on this he based his own account. That Hamilton should have made a shorthand report of the trial covering fifty-four pages seems, on the face of it, improbable. The extract which Mr. Gould gave in facsimile is obviously not in Hamilton's handwriting, as a most superficial comparison shows. Moreover, the extract in the facsimile is a verbatim reproduction of Coleman's shorthand report. All Mr. Gould's other extracts are either condensed versions or exact reproductions of the Coleman report. What he had in his possession was undoubtedly a draught of the Coleman report taken from the original shorthand reports, but, although it was not by Hamilton, Mr. Gould's material was authentic and accurate. The same may be said of the account in Doctor Hamilton's book about his grandfather, published in 1910. He had before him the Coleman report, and therefore knew what really happened.

There were three reports of the Weeks trial. One was a longhand report prepared by a man named Longworth, and put out the very day after the verdict to meet the popular demand and snatch the benefit of the first excitement. Coleman speaks of it as an entirely worthless report, which is probably true, although

I have not been able to find a copy of it. The second report was by James Hardie. This was also a long-hand report, and seems to have been carefully prepared and to be as accurate as such a report could be. The third was the shorthand report by William Coleman, which is both full and accurate. On page 82 there is given the evidence of William Dustan, which is as follows:

Last Friday morning a man, I don't know his name, came into my store. (*Here one of the prisoner's counsel held a candle close to Croucher's face, who stood among the crowd, and asked the witness if it was he. And he said it was.*) He said, "Good morning, gentlemen, Levi Weeks is taken up by the high sheriff, and there is fresh evidence against him from Hackensack." He then went away, and as he went out he said, "My name is Croucher"; and this was all the business he had with me.

There we have the entire foundation for the dramatic scene conjured up by Parton and John C. Hamilton. The report does not show which of the prisoner's counsel held a candle to Croucher's face, but Mrs. Hamilton, according to Mr. Gould, always said that it was her husband who did it, and, in the absence of any other evidence, this may be accepted as the truth. It was a very natural thing to do. There was nothing remarkable about it. It might well have occurred to anybody in that ill-lighted courtroom when a question of identification was raised. A little later in the trial



a witness named Matthew Mustee was on the stand, and he was asked by counsel for the prisoner: "Do you know Levi Weeks? Should you know the person you speak of if you saw him? A. I don't know as I should. Q. (by the assistant attorney-general). Take the candle and look round and see if you can pick him out. (He went nearer the prisoner, and pointing to him said): That was he." <sup>1</sup>

That is the whole story of what actually happened. It was a perfectly commonplace incident, and it is interesting to see how it has been developed by two biographers, relying on hearsay and wandering traditions, into a picturesque and dramatic scene. It is a quite perfect example of historical myth-making — one little natural incident developing two full-grown myths — but it is to be feared that the stories of Parton and John C. Hamilton will continue to be repeated, for the unvarnished facts make no appeal to the imagination. The trial itself was dramatic enough and full of human interest, but that will all be passed over and forgotten in favor of a wholly unsupported legend which it is pleasant to have attached to the memory of an eminent man.

<sup>1</sup> Coleman's Report, p. 90.

## AS TO ANTHOLOGIES <sup>1</sup>

EVER since civilized man has had a literature he has apparently sought to make selections from it and thus put his favorite passages together under one roof in a compact and convenient form. Certain it is, at least, that to the Greeks, masters in all great arts, we owe this habit. They made such collections and named them, after their pleasant imaginative fashion, a gathering of flowers, or what we, borrowing their word, call an anthology. So to those austere souls who regard anthologies as a labor-saving contrivance for the benefit of persons who like a smattering of knowledge and are never really learned, we can at least plead in mitigation that we have high and ancient authority for the practice. In any event no amount of scholarly deprecation has been able to turn mankind or that portion of mankind which reads books from the agreeable habit of making volumes of selections and finding in them much pleasure, as well as improvement in taste and knowledge. With the spread of education and with the enormous in-

<sup>1</sup> This essay was written as an introduction to *The Best of the World's Classics*, ten volumes of prose selections published by Funk & Wagnalls.

crease of literature among all civilized nations, more especially since the invention of printing and its vast multiplication of books, the making of volumes of selections comprising what is best in one's own or in many literatures is no longer a mere matter of taste or convenience as with the Greeks, but has become something little short of a necessity in this world of many workers, comparatively few scholars, and still fewer intelligent men of leisure. Anthologies have been multiplied like all other books, and in the main they have done much good and little harm. The man who thinks he is a scholar or highly educated because he is familiar with what is collected in a well-chosen anthology, of course errs grievously. Such familiarity no more makes one a master of literature than a perusal of a dictionary makes the reader a master of style. But as the latter pursuit can hardly fail to enlarge a man's vocabulary, so the former adds to his knowledge, increases his stock of ideas, liberalizes his mind, and opens to him new sources of enjoyment.

The habit of the Greeks was to bring together selections of verse, passages of especial merit, epigrams and short poems. In the main their example has been followed. From their days down to the *Elegant Extracts* in Verse of our grandmothers and grandfathers, and thence on to our own time with its admirable *Golden Treasury* and *Oxford Handbook of Verse*, there has been no end to the making of poetical anthologies and ap-

parently no diminution in the public appetite for them. Poetry indeed lends itself to selection. Much of the best poetry of the world is contained in short poems, complete in themselves, and capable of transference bodily to a volume of selections. There are very few poets of whose quality and genius a fair idea cannot be given by a few judicious selections. A large body of noble and beautiful poetry, of verse which is "a joy forever," can also be given in a very small compass. And the mechanical attribute of size, it must be remembered, is very important in making a successful anthology, for an essential quality of a volume of selections is that it should be easily portable, that it should be a book which can be slipped into the pocket and readily carried about in any wanderings whether near or remote. An anthology which is stored in one or more huge and heavy volumes is practically valueless except to those who have neither books nor access to a public library, or who think that a stately tome printed on calendered paper and "profusely illustrated" is an ornament to a centre-table in a parlor rarely used except on funereal or other official occasions.

I have mentioned these advantages of verse for the purposes of an anthology in order to show the difficulties which must be encountered in making a prose selection. Very little prose is to be found in small parcels which can be transferred entire, and therefore with the very important attribute of com-

pleteness, to a volume of selections. From most of the great prose writers it is necessary to take extracts, and the chosen passage is broken off from what comes before and after. The fame of a prose writer, as a rule, rests on a book, and really to know him the book must be read and not merely selected passages. Extracts give no very satisfactory idea of *Paradise Lost* or *The Divine Comedy*, and the same is true of extracts from a history or a novel. It is possible by spreading prose selections through a series of small volumes to conquer the mechanical difficulty and thus make the selections in form what they ought above all things to be — companions and not books of reference or table decorations. But the spiritual or literary problem is not so easily overcome. What prose to take and where to take it are by no means easy questions to solve. Yet they are well worth solving, so far as patient effort can do it, for in this period of easy printing it is desirable to put in convenient form before those who read examples of the masters which will draw us back from the perishing chatter of the moment to the literature which is the highest work of civilization and which is at once noble and lasting.

Upon that theory this collection has been formed. It is an attempt to give examples from all periods and languages of Western civilization of what is best and most memorable in their prose literature. That

the result is not a complete exhibition of the time and the literatures covered by the selections no one is better aware than the editors. Inexorable conditions of space make a certain degree of incompleteness inevitable when he who is gathering flowers traverses so vast a garden, and is obliged to store the results of his labors within such narrow bounds. The editors are also fully conscious that, like all other similar collections, this one, too, will give rise to the familiar criticism and questionings as to why such a passage was omitted and such another inserted; why this writer was chosen and that other passed by. In literature we all have our favorites, and even the most catholic of us has also his dislikes if not his pet aversions. I will frankly confess that there are authors represented in these volumes whose writings I should avoid, just as there are certain towns and cities of the world to which, having once visited them, I should never willingly return, for the simple reason that I would not voluntarily subject myself to seeing or reading what I dislike, or, which is worse, what bores and fatigues me. But no editor of an anthology must seek to impose upon others his own tastes and opinions. He must at the outset remember and never afterward forget that so far as possible his work must be free from the personal equation. He must recognize that some authors who may be mute or dull to him have a place in literature, past or present, sufficiently assured

to entitle them to a place among selections which are intended above all things else to be representative.

To those who wonder why some favorite of their own was omitted while something else for which they do not care at all has found a place, I can only say that the editors, having suppressed their own personal preferences, have proceeded on certain general principles which seem to be essential in making any selection either of verse or prose which shall possess broader and more enduring qualities than that of being a mere exhibition of the editor's personal taste. To illustrate my meaning: Emerson's *Parnassus* is extremely interesting as an exposition of the tastes and preferences of a remarkable man of great and original genius. As an anthology it is a failure, for it is of awkward size, is ill arranged, and contains selections made without system, and which in many cases baffle all attempts to explain their appearance. On the other hand, Mr. Palgrave, neither a very remarkable man nor a great and original genius, gave us in the first *Golden Treasury* a collection which has no interest whatever as reflecting the tastes of the editor, but which is quite perfect in its kind. Barring the disproportionate amount of Wordsworth, which includes some of his worst things — and which, be it said in passing, was due to Mr. Palgrave's giving way at that point to his personal enthusiasm — the *Golden Treasury* in form, in scope, and in arrangement, as well as in almost

unerring taste, is the best model of what an anthology should be which is to be found in any language.

Returning now to our questioner who misses some favorite and finds something else which he dislikes, the only answer, as I have just said, is that the collection is formed on certain general principles, as any similar collection of the sort must be. This series is called "The Best of the World's Classics," and "classics" is used not in the narrow and technical sense, but rather in that of Thoreau, who defined classics as "the noblest recorded thoughts of mankind." Therefore, the first principle of guidance in selection is to take examples of the great writings which have moved and influenced the thought of the world, and which have pre-eminently the quality of "high seriousness," as required by Aristotle. This test alone, however, would limit the selections too closely. Therefore the second principle of choice is to make selections from writers historically important either personally or by their writings. The third rule is to endeavor to give selections which shall be representative of the various literatures and the various periods through which the collection ranges. Lastly, and this applies, of course, only to passages taken from the writers of England and the United States, the effort has been to give specimens of the masters of English prose, of that prose in its development and at its best, and to show, so far as may be, what can be accomplished with



that great instrument, and what a fine style really is as exhibited in the best models. Everything contained in these volumes is there in obedience to one at least of these principles, many in obedience to more than one, some in conformity to all four.

No one will become a scholar or a master of any of the great literatures here represented by reading this collection. Literature and scholarship are not to be had so cheaply as that. Yet is there much profit to be had from these little volumes. They contain many passages which merit Doctor Johnson's fine saying about books: "That they help us to enjoy life or teach us to endure it." To the man of letters, to the man of wide reading, they will at least serve to recall, when far from libraries and books, those authors who have been the delight and the instructors of a lifetime. They will surely bring with them the pleasures of memory and that keener delight which arises when we meet a poem or a passage of prose which we know as an old and well-loved friend, remote from home, upon some alien page.

To that larger public whose lives are not spent among books and libraries, and for whose delectation such a collection as this is primarily intended, these volumes rightly read at odd times, in idle moments, in out-of-the-way places, on the ship or the train, offer much. They will bring the reader in contact with many of the greatest intellects of all time.

They contain some of the noblest thoughts that have passed through the minds of our weak and erring race. There is no man who will not be the better, for the moment, at least, by reading what Cicero says about old age, Seneca about death, and Socrates about love, to go no further for examples than to

"The glory that was Greece,  
And the grandeur that was Rome."

Moreover, the bowing acquaintance which can be formed here may easily offer attractions which will lead to a close and intimate friendship, with all that the word implies, in the case of a great author or a great book. It seems to me, for example, as if no one who reads here the brief extracts from Erasmus or from Cervantes, to take at random two writers widely separated in thought, could fail to pursue the acquaintance thus begun, so potent are the sympathetic charm, the wit, the wisdom, and the humor of both these great men. There is, at least, variety in these little volumes, and while many things in them may not appeal to us, they may to our neighbor. That which "is dumb to us may speak to him."

Again, let it be noticed that there is much more than the "high seriousness," which is the test of the greatest prose as of the finest poetry. Humor and pathos, tragedy and comedy, all find their place, and glimpses of the pageant of human history flit through

the pages. It would seem as if it were impossible to read extracts from Thucydides and Tacitus and Gibbon and not long to go to their histories and read all that could be said by such men about the life of man upon earth, about Athens and Rome and the rise and fall of empires. Selections are unsatisfying, and the better they are the more unsatisfying they become. But this is in reality their true merit. They have much beauty in themselves, they awaken pleasant memories, they revive old delights, but, above all, if rightly read they open the gates to the illimitable gardens whence all the flowers which have here been gathered may be found blooming in radiance, unplucked and unbroken and rooted in their native soil.

The most important part of the collection is that which gives selections from those writers whose native tongue is English. No translation even of prose can ever quite reproduce its original, and, as a rule, cannot hope to equal it. There are many translations, notably the Elizabethan, which are extremely fine in themselves and memorable examples of English prose. Still, they are not the original writings. Something escapes in the translation into another tongue, an impalpable something which cannot be held or transmitted. The Bible stands alone, a great literary monument of the noblest and the most beautiful English, which has formed English speech and become a

part of the language as it is of the thought and emotion of the people who read the "King James" version in all parts of the globe. Yet we know that this version, which the people, so fortunate in its possession, wisely and absolutely decline to give up in exchange for any revision, is neither an accurate nor a faithful reproduction of its original. Therefore, putting aside the English Bible as wholly by itself, it may be safely said that the soul of a language and the beauties of style which it is capable of exhibiting can only be found and studied in the productions of writers who not only think in the language in which they write, but to whom that speech is native, the inalienable birthright and heritage of their race or country. In such writers we get not only the thought, the humor, or the pathos, all that can be transferred in a translation, but also the pleasure to the ear akin to music, the sense of form, the artistic gratification which form brings, all those attributes which are possible in the highest degree to those only to whom the language is native.

For these reasons, as will be readily understood, in making selections from those writers whose mother tongue is English, specimens have been given of all periods from the earliest time and occasionally of authors who would not otherwise find a place in such a collection, for the purpose of tracing in outline the development of English prose and the formation of an

English style which, like all true and great styles, is peculiar to the language and cannot be reproduced in any other. This is not the place, nor would it be feasible within any reasonable limits, to narrate the history of English prose. But in these selections it is possible to follow its gradual advance from the first rude and crude attempts through the splendid irregularities of the fifteenth and sixteenth centuries to the establishment of a standard of style in the eighteenth and thence onward to the modifications and changes in that standard which extend to our own time.

The purpose of this collection is not didactic. If it were it would be a school-book and not an anthology in the Greek sense, where the first principle was to seek what was of literary value, artistic in expression, and noble in thought. Yet the mere bringing together of examples of prose from the writings of the great masters of style cannot but teach a lesson never more needed than now.

I do not mean by this to suggest imitation of any writer. Nothing is more dangerous, especially when the style of the writer imitated is peculiar and strongly marked. That which is valuable and instructive is the opportunity given here for a study of fine English styles, and in this way to learn the capabilities of the language and the general principles which have governed the production of the best English prose. We

have in the English language an unequalled richness of vocabulary far surpassing in extent that of any other. It possesses a great literature and a body of poetry unrivalled in modern times. It is not only one of the strongest bonds of union in the United States, but it is the language in which our freedom was won and in which our history and our laws are written. It is our noblest heritage. To weaken, corrupt, or deprave it would be a misfortune without parallel to our entire people. Yet we cannot disguise from ourselves the fact that the fertility of the printing-press, the multiplication of cheap magazines, and the flood of printed words poured out daily in the newspapers all tend strongly in this direction. This is an era of haste and hurry stimulated by the great inventions which have changed human environment. Form and style in any art require time, and time seems the one thing we can neither spare nor wisely economize. Yet, in literature above all arts, to abandon form and style is inevitably destructive and entails misfortunes which can hardly be estimated, for loose, weak, and vulgar writing is a sure precursor of loose, weak, and vulgar thinking. If form of expression is cast aside, form in thought and in the presentation of thought is certain to follow. Against all this the fine English prose amply represented in these selections offers a silent and convincing protest to every one who will read it attentively.

We can begin with the splendid prose of the age

of Elizabeth and of the seventeenth century. It is irregular and untamed, but exuberant and brilliant, rich both in texture and substance. We find it at its height in the strange beauties of Sir Thomas Browne, in the noble pages of Milton, stiff with golden embroidery, as Macaulay says, and in the touching and beautiful simplicity of Bunyan's childlike sentences. Thence we pass to the eighteenth century, when English prose was freed from its involutions and irregularities and brought to uniformity and to a standard. The age of Anne gave to English prose balance, precision, and settled form. There have been periods of greater originality, but the eighteenth century at least lived up to Pope's doctrine, set forth in the familiar line:

"What oft was thought but ne'er so well exprest."

As there is no better period to turn to for instruction than the age of Anne, so, if we must choose a single writer, there is no better master to be studied than Swift. There have been many great writers and many fine and beautiful styles since the days of the terrible Dean of St. Patrick's, from the imposing and finely balanced sentences of Gibbon to the subtle delicacy of Hawthorne and the careful finish of Robert Louis Stevenson. But in Swift better than in any one writer can we find the lessons which are so sorely needed now. He had in the highest degree force,

clearness, and concentration all combined with a marvellous simplicity. Swift's style may have lacked richness, but it never failed in taste. There is not a line of false fine writing in all his books. Those are the qualities which are so needed now, simplicity and clearness and a scrupulous avoidance of that would-be fine writing which is not at all fine but merely vulgar and insincere.

The writing in our newspapers is where reform is particularly needed. There are great journals here and there which maintain throughout a careful standard of good and sober English. Most of them, unhappily, are too often filled in the news columns, at least, with a strange jargon found nowhere else, spoken by no one, and never used in daily life by those who every night furnish it to the compositors. It is happily compounded in about equal parts of turgid fine writing, vulgar jauntiness, and indiscriminate slang.

I can best show my meaning by an example. A writer in a newspaper wished to state that a man who had once caused excitement by a book of temporary interest and who, after the days of his notoriety were over, lived a long and checkered career, had killed himself. This is the way he said it:

His life's work void of fruition and dissipated into emptiness, his fondest hopes and ambitions crumbled and scattered, shunned as a fanatic, and unable to longer wage life's battle, Hinton Rowan Helper, at one time United States consul gen-



eral to Buenos Ayres, yesterday sought the darkest egress from his woes and disappointments — a suicide's death.

In an unpretentious lodging-house in Pennsylvania Avenue, near the Capitol, the man who as much, if not more than any other agitator, is said to have blazed the way to the Civil War, the writer who stirred this nation to its core by his anti-slavery philippics, and the promoter with the most gigantic railroad enterprise projected in the history of the world, was found gripped in the icy hand of death. The brain which gave birth to his historic writings had willed the stilling of the heart which for three-quarters of a century had palpitated quick and high with roseate hopes.

That passage, taken at hazard from a newspaper, is intended, I think, to be fine writing of an imposing and dramatic kind. Why could not the writer have written it, a little more carefully perhaps, but still in just the language which he would have used naturally in describing the event to his wife or friend? Simply stated, it would have been far more solemn and impressive than this turgid, insincere account with its large words, its forced note of tragedy, and its split infinitive. Let me put beneath it another description of a death-bed:

The blood and spirits of Le Fevre, which were waxing cold and slow, and were retreating to their last citadel, the heart — rallied back, — the film forsook his eyes for a moment, — he looked up wistfully into my Uncle Toby's face, — then cast a look upon his boy, — and that ligament, fine as it was, — was never broken.

Nature instantly ebbed again, — the film returned to its place,

— the pulse fluttered, — stopped, — went on, — throbbed, — stopped again, — moved, — stopped, — shall I go on? No.

This famous passage is neither unintentional sentiment nor unaffected pathos. The art is apparent even in the punctuation. The writer meant to be touching and pathetic and to awaken emotions of tenderness and pity and he succeeded. The description is all he meant it to be. The extract from the newspaper arouses no emotion, unless it be resentment at its form, and leaves us cold and unmoved. The other is touching and pitiful. Observe the manner in which Sterne obtains his effect, the perfect simplicity and good taste of every word, the reserve, the gentleness, the utter absence of any straining for effect. The one description died the day it appeared. The other has held its place for a century and a half. Are not the qualities which produced such a result worth striving for?

Let me take another haphazard selection from a description of a young girl entitled as such to every one's kindness, courtesy, and respect. In it occurs this sentence: "The college girl is grammatical in speech, but she has the jolliest, chummiest jargon of slang that ever rolled from under a pink tongue." That articulate sounds come from beneath the tongue is at least novel and few persons are fortunate enough to be able to talk with that portion of their mouths.

But I have no desire to dwell either upon the anatomical peculiarities of the sentence or upon its abysmal vulgarity. It is supposed to be effective, it is what is appropriately called "breezy," it is a form of words which can be heard nowhere in the speech of men and women. Why should it be consigned to print? It is possible to describe a young girl attractively and effectively in much simpler fashion. Let me give an example, not a famous passage at all, from another writer:

She shocked no canon of taste; she was admirably in keeping with herself, and never jarred against surrounding circumstances. Her figure, to be sure — so small as to be almost childlike and so elastic that motion seemed as easy or easier to it than rest — would hardly have suited one's idea of a countess. Neither did her face — with brown ringlets on either side and a slightly piquant nose, and the wholesome bloom, and the clear shade of tan, and the half dozen freckles, friendly remembrances of the April sun and breeze — precisely give us the right to call her beautiful. But there was both lustre and depth in her eyes. She was very pretty; as graceful as a bird and graceful much in the same way; as pleasant about the house as a gleam of sunshine falling on the floor through a shadow of twinkling leaves, or as a ray of firelight that dances on the wall while evening is drawing nigh.

Contrast this with the newspaper sentence and the sensation is one of pain. Again I say, observe the method by which Hawthorne gets his effect, the simplicity of the language, the balance of the sentences,

the reserve, the refinement, and the final imaginative touch in the charming comparison with which the passage ends.

To blame the hard-working men who write for the day which is passing over them because they do not write like Sterne and Hawthorne would be as absurd as it would be unjust. But they ought to recognize the qualities of fine English prose; they ought to remember that they can improve their readers by giving them good, simple English, pure and undefiled, and they ought not to debauch the public taste by vulgar fine writing and even more vulgar light writing. In short, they ought to write for the public as they would talk to their wives and children and friends; a little more formally and carefully, perhaps, but in the same simple and direct fashion.

For the prolific authors of the flood of stories which every month bears on its broad bosom many tons of advertisements, no such allowance need be made. They are not compelled to furnish copy between daylight and dark. They need a course of study in English prose more than any one else, and they would profit by the effort. As a class they seem to be like the young man in Du Maurier's picture, who, being asked if he had read Thackeray, replies, "No. I nevah read novels; I write them."

In this age of quickening movement and restless haste, it is, above all things, important to struggle

against the well-nigh universal inclination to abandon all efforts for form and style. They are the true preservers of what is best in literature, the salt which ought never to lose its savor. Those who use English in public speech and public writing have a serious responsibility too generally forgotten and disregarded. No single man can hope to effect much by any plea he can make in behalf of the use of good English, whether written or spoken. But no one, I think, can read the great masterpieces of English prose and not have both lesson and responsibility brought home to him. He would be insensible, indeed, if he did not feel after such reading that he was a sharer in the noble heritage which it behooved him to guard and cherish. If this series serves no other purpose, it will exhibit to those who read it some of the splendors and the beauties of English prose. It will at least open the gates of literature and perhaps lead its readers to authors they have not known before, or recall the words of writers who have entered into their lives and thoughts and thus make them more mindful of the inestimable value to them and their children of the great language which is at once their birthright and their inheritance.

## THE ORIGIN OF CERTAIN AMERICANISMS

“Some words on language may be well applied,  
And take them kindly, though they touch your pride.  
Words lead to things.”

THE accepted manner of defining Americans, either male or female, in the London comic papers or in second-rate English novels is to lard their speech plentifully with “calculate” and “guess,” and with “well” at the opening of each sentence. This mode of marking, or any other, is in itself totally unimportant, but linguistically it is not without interest, for while it is purely conventional as now used and has no relation to any American habits of the present day, whether good or bad, it is pleasant to note that the hard-worked insular humorists need not have gone so far afield to find the words necessary for the identification of Americans. They really had but to turn to the *New Letters of Thomas Carlyle* (vol. I, p. 178) and there read the following sentence: “He has brought you a Fox’s book of Martyrs, which I *calculate* will go in the parcel to-day; you will get *right good* reading out of it, I *guess*.”<sup>1</sup>

<sup>1</sup> The italics are my own.

This was a private letter in which Carlyle was neither satirizing nor imitating anybody, and used quite naturally words to which he was accustomed. Yet every one of those which are printed in italics is employed by British writers to characterize American speech and to show at the same time how vulgar and degenerate it is. "Calculate," as used by Carlyle, was three-quarters of a century ago typically American and especially characteristic of New England. It is now rarely heard anywhere in the United States.

Carlyle's use of "guess" in the American fashion also, as meaning to "think" or "suppose," has behind it the best authority — one at least much older than Shakespeare, who was likewise American enough "to guess"; for Chaucer says, in the Prologue (I, 82), "Of twenty yeer of age, he was, I gesse." Pope uses "guess" in the American fashion very frequently in his letters. (See vol. VI, Courthope edition, pp. 66, 69-71, and vol. VII, p. 230.) Gray has the American "guess" in his letters (vol. II, p. 109), and Coleridge was addicted to it. He uses it in *Christabel* (Pickering edition, 1836, vol. II, p. 32), "I guess, 'twas frightful there to see," and also in his letters, "I guess I shall be there in seven days" (vol. I, p. 434); and again (vol. II, p. 664), "which formed, I guess, part of the impulse which occasioned my last letter."

Wordsworth also has it in "He was a lovely youth, I guess," a line which it seems almost cruel to quote,

because it reflects so severely upon the memory of a great poet. Indeed, it almost surpasses that other bit of champion prosaic verse, "A Mr. Wilkinson, a clergyman," so beloved of Tennyson and Fitzgerald. Robert Louis Stevenson writes, "Otherwise much the same, I guess," quite naturally and without italics or quotation marks (Letters, edition 1899, vol. I, p. 293).

Chaucer, Shakespeare, Pope, Gray, Coleridge, Wordsworth, Carlyle, Stevenson — at least we Americans sin in good company when we "guess," and we might aptly say to the insular humorist who is unread in these authors that it is better

". . . to err with Pope than shine with Pye."

But of course, seriously speaking, the word "guess" is a good old English word, and the American usage is both excellent and correct, as well as far truer to the tradition and spirit of the language than the British substitutes of "fancy," "imagine," or "expect"; which last is also American and quite grotesquely wrong, because it can properly apply only to the future.

Pope's name in Byron's line is a reminder that the other italicized phrase of "right good" in Carlyle's letter still demands a word of explanation. In justice to Carlyle it should be said, in passing, that he is not the only great writer of that period who used "right good." Dickens, who hated Americans and all things American with a sleepless hatred difficult now to com-



prehend, even as the result of wounded vanity, speaks of a "right good income" in one of his letters (Forster's Life, Gadshill edition, vol. I, p. 481). "Right good" is common in colloquial speech in certain parts of the United States, and "real good" in all. Both are, as I have said, colloquial; neither would be considered good English or be employed by any careful writer or speaker. Yet I am sorry to say, for I dislike the use of either phrase, that those who indulge in them will find, if they turn to Spence's Anecdotes (p. 2), that Pope, the very apostle of "correctness," speaks of Prior as not a "right good man," and a little later (p. 46) is quoted as saying that Garth, Vanbrugh, and Congreve were the three most honest-hearted, "*real good men* of the poetical members of the Kitcat Club." I have tried to convince myself that Pope, if correctly quoted by Spence, used "real" as an adjective, but the punctuation renders this explanation, a strained one at best, impossible. Yet even the high authority of the greatest of Queen Anne's poets, while it shows whence Carlyle, Dickens, and Americans alike derive these phrases, cannot make "right good" the best English, or "real good" anything but a vulgarism. Yet it is well for the British critic to remember that when he is defending our common language from these two Americanisms he is at the same time condemning Pope, Dickens, and Carlyle, who would be surprised, I think, to find that they had been guilty of two typical

instances of American shortcomings in the difficult art of speaking English.

Let me pause a moment before I go further to say that I have not forgotten Mr. Lang's reply to Mr. Matthews, who had been printing some hideous neologisms and coinages taken from current British publications, of which we in the United States were quite guiltless. Mr. Lang then wrote: "A word or a phrase does not become a Britishism because one good writer lets it fall from his pen, nor because it appears in the prose of a writer of advertisements"; and again: "I hope Mr. Matthews will understand that to pick a few neologisms or vulgarisms of no general currency out of such sources as he searches in is not to prove that the peccant terms are in general national use." If Mr. Lang would only have applied these rules in criticising the English spoken by a majority of those who now use and love that splendid speech, it would have been well. But this does not concern me here. The examples I have thus far quoted and all that I shall quote are not culled from advertisements. Still less are they given to convict the inhabitants of Great Britain of using neologisms or vulgarisms. The phrases I quote have been picked up casually in that desultory reading which Doctor Johnson so wisely defended, and which was not indulged in with any linguistic purpose. My object is merely to show that those British writers who talk idiotically (it is impos-

sible to find a civil word) about the "American language" and groan over the injury wrought in our common speech by American innovations, ought to know English literature, at least superficially, before they cry out, so that they may be enabled to shriek intelligently. Chaucer, Shakespeare, Pope, Gray, Coleridge, Stevenson, and Carlyle cannot be brushed aside as "advertisements" or as good writers who "let fall a word." They represent the best English of their times, and the phrases they used, whether good or bad, may be set down as characteristic and accepted English in Great Britain at their respective periods. The employment of phrases or words by writers like these demonstrates the usage of the time. In this way we get the pedigree of many "Americanisms," and it is well to remember that because the men who brought Shakespeare's and Milton's English (the only English they could bring) to the New World retained phrases and words which have since become obsolete in England, it does not therefore follow that those words and phrases thus preserved are American inventions or dangerous and vulgar innovations.

As showing the truth of what I have just said let me take a familiar illustration which when followed out in detail demonstrates quite perfectly the danger of branding a word or its use as an "Americanism," simply because it is not current in Great Britain today. "Rare" as applied to meat, instead of the Eng-

lish "underdone," has always been held up as a rank and very absurd "Americanism." Let us see. In "Christ's Hospital Twenty Years Ago," Lamb (I wish that we could claim him as an American) says: "Portions of the same flesh, rotten — roasted or *rare*." Here is the American usage. Let us take another step backward in the "abysm of time." In his translation from Ovid of the story of Baucis and Philemon Dryden writes:

"And new-laid eggs, which Baucis' busy care  
Turned by a gentle fire and roasted *rare*."

Now we can guess whence "rare" came to America. It was good seventeenth-century English, and the Englishmen who came to America brought it with them and their descendants kept it. But whence came the word with that significance into English? It has a pedigree outdating those of purest Norman descent. Turn to an Anglo-Saxon dictionary and you will find the word, "Hrére — rear or *raw*." So we discover that our "Americanism" of "rare" meat is purely Anglo-Saxon, and this fact suggests that before accusing us of a misuse of the word "rare" English critics should learn that it is not an offspring of the Latin "rarus," but a sound, almost unchanged, Saxon word of an entirely different meaning.

Although it has not been so much insisted upon lately, not many years ago — from the time of Dickens and

the American Notes onward — it used to be solemnly pointed out that Americans could be immediately identified by their shocking habit of using “well” constantly at the beginning of a sentence, either reflectively or as an exclamation. Some years since, in a brief essay, I pointed out that Shakespeare constantly used “well” in this fashion at the beginning of sentences. Since then I have noted some other authors of repute who were guilty of this habit, thereby identifying themselves as Americans with an imperfect knowledge of their native tongue. It occurs constantly, for example, in Sir Thomas Mallory’s version of the *Morte d’Arthur*, and we find it at the beginning of one of Marlowe’s “mighty lines” when Cosroe says:

“Well, since I see the state of Persia droop.”

—*Tamburlaine*, Sc. I.

Another phrase for which we Americans were wont to be censured was “good time,” in the sense that one had enjoyed one’s self. The clumsy circumlocution necessary to explain the words thus combined shows at once the soundness and excellence of the phrase. Yet in the later nineteenth century the British undertook to restrict the use of “good time” to a woman’s confinement, just as in the same period they insisted that “sick,” despite Shakespeare and the Bible and the Prayer-book, must be limited to describing nausea and no other ill that flesh is heir to.

We need only go to Dryden to demonstrate that the American use of "good time" has the best authority. In *Absalom and Achitophel* (Scott's edition, vol. IX, p. 235) occur these lines:

"During his office treason was no crime;  
The sons of Belial had a glorious time."

So "glorious time" or "good time" was good seventeenth-century English, approved by Dryden, and the English-speaking people in America used it, and being isolated in those days, let it take root and kept it. They were wise in so doing, wiser than their English brethren, for it is a terse, sound phrase, good English, and not easily replaced. It must in justice be said that the British are now coming round to the usage of Dryden and of the United States. Stevenson says in one of the *Vailima Letters*: "I have the loveliest time." Henry Greville uses "pleasant time" in the American sense in 1854 (vol. I, series I, p. 181). Sir Leslie Stephen, than whom there was no more careful writer, uses "good time" in the American sense in his introduction to the letters of J. R. Green (p. 22), and I have also found it employed in similar fashion by Canon Ainger (*Life*, p. 142), who was certainly most fastidious in all things literary. So we may feel sure, I think, that this sound seventeenth-century "Americanism" has been vindicated and is returning to the complete possession of that wide application of which insular usage tried at one time to deprive it.

In the same way "mad" was used with the American sense of "angry" in the seventeenth century. We find it in Pepys (vol. II, p. 72). It is also found in Defoe (*The Compleat Gentleman*, p. 158):

"My lord," said I, "you are in a passion."

"It makes me mad," said he.

Again, in *Robinson Crusoe*, "Friday," who is learning English from his master, says: "Why, you, angry mad" (*Everyman's edition*, p. 163).

In both these instances it is used explicitly in the sense of angry, but with Defoe, as with Pepys, it seems to be wholly colloquial. Yet still it remained in use, never sinking apparently to the condition of a vulgarism or of mere slang. The seventeenth and eighteenth century usage, lost in England, has been retained in the United States, and the employment of the word in the sense of angry has continued unchanged. No good writer or speaker would use it either in book or speech, but in the common talk of daily life "mad" for angry is still thought permissible, and if neither elegant nor of literary propriety, it is equally removed from being considered a mere vulgarism.

The word "ride" presents a very similar case. I was brought up to use "ride" only with reference to riding on horseback, but American usage has extended its application to being carried in any form of conveyance, whether in carriages or horse-drawn vehicles,

which was formerly described as "driving," or in street-cars, railroad-trains, motor-cars, or even in boats. I had supposed this misapplication of "ride" as it appeared to me was a modern growth, but I found with some surprise that Pope in his letters (vol. VIII, p. 349) applied it to being carried in vehicles generally. Here again the American use dates back to the English usage of the eighteenth century.

Another word not infrequently employed, like "calculate," to mark an American in English books and comic papers is "smart" in the sense of "bright," "quick," "clever," descriptive of the intelligence, but with a shade of meaning which none of these equivalents exactly conveys. The word in this form is widely diffused in the United States, although it has been, perhaps, peculiarly characteristic of New England, where "smartness" of that kind was greatly admired. In England "smart" has of late been applied only to external objects, to appearance, to dress, to equipages, and the like. Both usages are old and good. One has been largely abandoned in England, both have remained in America. We find "smart" applied to dress in a Lincolnshire Tale, cited by Halliwell in his Dictionary of Archaisms. On the other hand, the word is employed in the American sense by Goldsmith in *The Citizen of the World* (vol. II, p. 153), who there speaks of a "youth of smart parts." Again he speaks of "smart verses" (vol. II, p. 451). We learn from



Dickens's immortal description of the Eatanswill election that Fizkin's agent was a "smart fellow; very smart fellow indeed." Gilman in his unfinished *Life of Coleridge* says (p. 259), "he (Coleridge) was according to modern phraseology 'smart and clever.'" Gilman's book appeared in 1838, and this statement is curious, for it seems to indicate that the American usage, familiar to Goldsmith, was making a reappearance in England, and was regarded as a novelty. If it did so appear the word evidently failed to make its way at that time. Another interesting thing in Gilman's sentence is that he includes "clever" in the quotation marks with "smart," as if "clever" in the sense of quick and intelligent was a novel usage, one not thoroughly established. "Clever" is now generally, if not exclusively, used in that sense in both Great Britain and the United States; but in the middle of the last century and for twenty years later "clever" was used universally in New England, and quite generally, I think, in the United States, in the sense of "good-natured," "honest and kindly," without any suggestion of keen intelligence. I well remember hearing people say sometimes when using the word in what is now the universally accepted manner, "I mean English clever." It seems evident that the old use of "smart" in both senses continued in England down to the end of the eighteenth century, and then the application of the word to a man's intelligence disappeared, while in

America both applications survived. As to "clever" in the old American sense of "good-natured" not only Goldsmith, but Gray in his Letters (vol. II, p. 318), is a witness that this use of the word was in good and recognized standing in the England of the eighteenth century. The usage lingered on in the popular speech of America long after it had disappeared in England, and now, although still occasionally heard in the United States, has been practically abandoned in both countries.

"Different from" can hardly be called an Americanism, because it can be found in English writers of the highest mark at all periods. Byron, for example, used "different from" in his letters (Prothero edition, vol. IV, p. 422), and so, too, does Matthew Arnold in his (vol. XIII, I, p. 79). But during the last century a fashion grew up in England of saying and writing "different to." I have met with it in many recent authors of repute, and some Americans — the few who like to ape English habits, good or bad — undertook to use it in this country with very slight success. There never was either warrant or reason for "different to" and it is clearly ungrammatical, as was strongly shown by a writer in the Spectator not long since in an article condemning this practice among some of his countrymen. "Different from" is not only correct, but if any one desires authority he can find a great one in Doctor Johnson, who uses it in his letters

(Hill edition, I, p. 189). Charles Fox also used "different from" in speaking (Landor's Commentary, p. 39). The universal American usage, I am glad to think, is again prevailing in England, where it was set aside only in obedience to some strange freak for which no cause can be alleged.

The best statement of the case can be found in a letter from "Lewis Carroll," author of the Alice books, to Miss Edith Rix in 1886. He says: "Now I come to your letter dated December 22d and must scold you for saying that my solution of the problem was 'quite different to all common ways of doing it.' If you think that's good English, well and good; but I must beg to differ to you and to hope you will never write me a sentence similar from this again."<sup>1</sup>

In the latter part of the last century, also, it was the fashion in England to condemn "mutual friend" and insist upon "common friend." The latter never effected a lodgment in America except among those who wished to be "different to" their fellow-countrymen. Without discussing the merits of the two forms, it may be noted that there is excellent and abundant authority for the American usage. Not only did Dickens use "Mutual Friend" as the title of one of his novels, but I have found it more than a century earlier in one of Sterne's letters to Lydia (Letter II, 1740),

<sup>1</sup>I owe this quotation to the kindness of my friend, Mr. Edward Robinson, director of the Metropolitan Museum.

and have also come across it in both Gilman's and Cottle's *Memoirs of Coleridge* and in *Lavengro* (p. 200, chap. 33, Everyman's edition), as well as in Mr. Dyce's preface to his edition of Marlowe. Byron in his conversations with Lady Blessington (pp. 3 and 4) and Thackeray in *Party Giving Snobs* and twice in the *Roundabout Paper*, "On a joke I heard from the Late Thomas Hood," are both guilty of the 'Americanism "mutual friend." Thomas Campbell in his *Life of Mrs. Siddons* (American edition, 1834, p. 98) speaks of meeting "our mutual friend."

Turning from words and phrases which are admitted to good verbal society, there are some curious and ancient pedigrees to be found for others which do not now pass beyond popular speech and are, in many instances, still lower in the scale, never having risen above the level of slang.

"Tramps" for vagrants has risen to an established position and may be said to be accepted in literature. But its lowly origin as convenient slang is still recent, and yet I find that it was used by De Quincey (*Confessions*, vol. I, p. 147), who says, "tramps as they are called in Solemn Acts of Parliament." So the ancestry of this Americanism is not only old English, but has statutory recognition.

"Slouch" as a noun, and generally in the form "he's no slouch," to express extreme effectiveness or skill, was widely used some years ago in the United States.

The word is good English in other connections, and in the slang form was vigorous and expressive. But we cannot claim priority of invention in this phrase, for Gay in his first Pastoral (vol. I, p. 77, Underhill edition) writes, "Thou vaunting slouch." I also noticed that Michael Kelly in his *Reminiscences*, published in 1825 (vol. II, p. 54), says: "Captain Stanley, who for many years was no slouch at the bottle," which shows that the phrase was current in England at that time.

Many years older than "slouch" used as slang was the use of the word "notions" in popular American speech, and especially in New England, where it might be seen as a sign over village shops to indicate to passers-by that all sorts of things, and particularly articles of dress, might be bought within. "Yankee notions" was a current and common phrase. This, like so many other words in America, was a case of survival in the New World of a usage which had faded out in the Old. How old it was I do not know, but that it was well understood in England in the American sense during the eighteenth century is clear, for Young in his *Night Thoughts* (Book II) has these lines:

"And other worlds send odours, sauce and song,  
And robes and notions framed in foreign looms!"

"Yankee notions," which smacks so strongly of New England in earlier days, reminds me of the old

pronunciation in that part of the country of "shire" as "sheer." Within thirty years "Shiretown" was generally pronounced "Sheer-town" by the country folk of New England. This pronunciation or that which makes it "sher" continues, of course, universally where "shire" is a final syllable, but when used alone or at the beginning of a word phonetic spelling has triumphed, and shire is pronounced as spelled. Yet the old Yankee pronunciation was not only the old English practice, but was that of cultivated society in Queen Anne's day. We may read it in the prologue to the Satires (lines 364-365), where Pope writes:

"A hireling scribbler, or a hireling peer,  
Knight of the post corrupt, or of the shire."

Swift, on the other hand, makes "shire" as a termination rhyme with "hire," which would be rather forced even at the present day.

There is another word, now growing old-fashioned, I think, much used on the coast in fishing, and I believe, formerly at least, widely used in a figurative sense, signifying to entice, or to draw on by degrees. This is the verb to "tole." Whether it survives in England I do not know, but in American speech it still continues a well-understood and descriptive term. If it be an Americanism it is one our earliest settlers brought with them from England, where it then mingled

in the best society, for we find it used by Fletcher in the Faithful Shepherdess (act I, sc. I):

“Or voices calling me in the dead of night,  
To make me follow, and so tole me on  
Through mire and standing pools to find my ruin.”

The fact that Mr. Dyce thinks a note necessary to explain the meaning of “tole” leads me to believe that since the days of Fletcher it has become an Americanism, and has been lost to British speech.

There is another phrase common in New England, if not in the United States generally, which has an equally long and even more distinguished pedigree. It occurs in inquiries as to distance or in stating distance by asking: “How far do you *call it* to the next town?” Mrs. Stopes in her Lives of the Burbages quotes from Macbeth the line, “How far is’t called to Forres?” and argues that as this is a pure Scotch idiom it shows that Shakespeare must have been in Scotland. As I have just said, the phrase has always been in common use in New England, which was settled in the seventeenth century by Shakespeare’s Englishmen, and to which came at that time very few, if any, Scotch.

Some years ago a Southern member of Congress used the phrase, “Where are we at?” which had a success little anticipated, I imagine, by its author, for it was caught up by the newspapers and passed widely into the current speech of the moment. I think it

gained its attraction not merely because it was expressive, but because it was thought odd and ungrammatical. However this may be, the phrase was not new, for Leigh Hunt in his introduction to the *Dramatists of the Restoration* (p. xviii) writes: "The dramatic power of Wycherly would not have known what to be at with the unseasonable and arbitrary superfluities of Dryden." The parallel is not exact, but the relationship is very close. "What to be at," in the sense of "what to do," is not far removed from "where are we at," in the sense of "where are we."

Leigh Hunt, I am sorry to say, was guilty of something much worse than this, despite the fact that he was not only a graceful writer, but an accomplished man, and both a lover and student of literature. He "let fall from his pen" (*Correspondence*, II, p. 104, letter to R. Bell, 1845) the entirely odious word "brainy." It is, of course, quite true that we have both "hearty" and "handy" and as slang "nervy," but this fact does not seem to make "brainy" any more tolerable or attractive. I fear that this word must now be called an Americanism, for it may be frequently seen in our newspapers, and not even the example of Leigh Hunt can redeem it from its utter hideousness. The fact is, and it always seems a very strange one, that many of our newspaper writers, especially our reporters, when they sit down to address the public do so in a strange language found only in



newspapers and which they would never think of using when talking or writing to their wives, their children, or their friends. I commend to their consideration the following passage from Macaulay's *Essay on Johnson*:

When he wrote for publication, he did his sentences out of English into Johnsonese. His letters from the Hebrides to Mrs. Thrale are the original of that work of which the *Journey to the Hebrides* is the translation; and it is amusing to compare the two versions. "When we were taken upstairs," says he in one of his letters, "a dirty fellow bounced out of the bed on which one of us was to lie." This incident is recorded in the *Journey* as follows: "Out of one of the beds on which we were to repose started up, at our entrance, a man black as Cyclops from the forge." Sometimes Johnson translated aloud. "The *Rehearsal*," he said, very unjustly, "has not wit enough to keep it sweet"; then, after a pause, "it has not vitality enough to preserve it from putrefaction."

Johnson was a great man from whom much wisdom may be learned, but here he gives us a vivid example, by his own bad habit, of what to avoid. If all newspaper men would only write as they talk, more carefully, of course, and without slang, but in the plain, simple, excellent words of their daily speech, they would render a real service both to their fellow-citizens and to the English language, and they would keep clear of such repulsive coinages as "brainy," and of such abuses of language and meaning as the employment of "probe" in the sense of an inquiry or investigation.

This objectionable word "brainy," however, reminds me of another slang term which has lately come into vogue. This is "dotty," signifying the decay of the faculties or debility of mind. I was interested to discover in the *Life of Edward Fitzgerald* that "dotty," with precisely the same significance as the modern slang, was used by the Suffolk peasants. Probably, therefore, it is a very ancient word, although a recent immigrant to the United States.

There is another word, of interest not only in itself, but on account of the brutal action which it represented. In the first half of the nineteenth century both word and custom were held to be characteristically American, and were flung at us as a reproach. Every reader of *Bon Gaultier's Ballads* will remember the very savage one about Jabez Dollar, which attacked us for every conceivable shortcoming, but particularly for "gouging" as a recognized mode of fighting by forcing out an opponent's eyeball with the thumb or finger. How generally this barbarous and unutterably brutal form of attack was diffused among the criminal classes or the wild and rough population of the frontier it is impossible to say. There is no doubt that this mode of savage fighting, as well as the word which described it, was unfortunately well known at that period in the United States. But we came by it by descent. Both word and habit existed in Yorkshire. Mrs. Gaskell, in her *Life of Charlotte Brontë*,

when describing Haworth (p. 26, Harper edition) writes: "As few 'shirked their liquor' [the occasion was funeral feasts] there were very frequently 'up and down fights' before the end of the day; sometimes with the horrid additions of 'pawsing' [apparently a peculiarly painful mode of kicking] and 'gouging' and biting." From this part of England—where is also found the very characteristic American word "bottom" (*ibid.*, p. 3) to describe low-lying lands in a valley—came many immigrants to colonial and provincial America, bringing their words and customs, good or bad, with them, and "gouging" was one of the latter. So the British satirist, with his eyes tight shut toward Yorkshire, held us up to scorn as peculiarly guilty of a particularly brutal kind of fighting.

There seems to be a moral to be drawn from this identification of the origin of a word and custom, and that is that it is well to exercise a little charity as well as to know one's ground before accusing one's neighbor of either barbarism or bad English. Indeed, all the pedigrees which I have brought together, and which have been gathered casually, without research, from authors whom every one reads, teach the same lesson. There is no particular satisfaction, although there is some amusement, in pointing out the origin of words and phrases which reveal the absurdity of the British fault-finding that sets them down as Americanisms and as vulgar distortions of our common speech. But

there is something far more important than this involved in any study, no matter how slight, of the varying forms of English words, and that is the language itself. People ordinarily accept the language to which they are born as they do the air they breathe, without any feeling of either responsibility or gratitude. Thousands of people, especially children and college youths, are set or set themselves to the work of acquiring foreign tongues, a most commendable labor, and never learn or even seek to learn how to speak properly or write intelligently the noble language which is theirs as a birthright. Yet is the English language one of our greatest and most precious possessions, to be jealously watched and guarded. To take only the practical side, I have often wondered how many people have stopped to consider that our language is one of the greatest bonds which hold the Union together, perhaps the strongest, as it is the most impalpable of all. If it were not for our common speech Lincoln's "mystic chords" would be dumb indeed. In the language, too, lies the best hope of assimilating and Americanizing the vast masses of immigrants who every year pour out upon our shores, for when these newcomers learn the language, they inevitably absorb, in greater or less degree, the traditions and beliefs, the aspirations and the modes of thought, the ideals and the attitude toward life, which that language alone enshrines.

These immeasurable gifts have a peculiar significance to us of the New World, but in addition are those, no less beneficent, which all who speak English share in common. To possess English as a birthright opens to every man so born, without effort and without price, the greatest literature, except that of Greece, which the world has known. It makes us kin to both the Teutonic and the Latin languages, and the doors to both those great literatures open easily to any of us who would enter in.

A few years ago a German philologist (German, of course) counted the words in some of the principal modern languages and found that English had 260,000 in its vocabulary. Next, *longo intervallo*, came German, with 80,000 words, then Italian with 75,000, French with 30,000, Turkish with 22,500, and Spanish with 20,000. Mere size of vocabulary, as the French Figaro said in commenting upon the figures, does not imply literary excellence, or the reverse — literary deficiency. But the enormous number of English words, so much greater apparently than that of any other modern tongue, shows beyond question the assimilative, expansive quality of the language, as well as its richness and flexibility. It proves that the language has grown and spread with the growth and spread of the people who speak it, keeping pace with the exploration of all corners of the globe and with the multiplication of industries and the widening of knowledge. In the number

of people who speak it, and in its distribution throughout the world, it comes to-day nearer to being a world language than any other now spoken.

Such a language, with its history and traditions, with its literature and its unequalled richness, is a great heritage, and the duty devolves upon all to whom it belongs as a birthright to guard and cherish it, to preserve its purity and strength, and in order that it may retain its commanding place not to encourage and cultivate differences, but strive to secure the greatest possible uniformity in its use in all quarters of the globe.

The importance of uniformity in usage, not only to the quality, but to the growth and spread of the language, can hardly be overestimated. Uniformity in pronunciation cannot be hoped for, because variations in pronunciation will range from the strange dialects of remote and isolated communities to those fine shades of difference which exist even among the best-educated people who are in contact with the world of men and books and which are of little practical importance. Men may be capable of keeping their minds unchanged when they change their sky, but not the manner in which they sound their vowels and consonants. The fact that a hundred miles is enough, sometimes, to cause a difference in the manner in which people speaking precisely the same language sound the letter "a," for instance, is suffi-

cient to show how inept it is to talk about phonetic spelling.

But although uniform pronunciation, desirable, no doubt, but not essential, may be unattainable, substantial uniformity in meaning and spelling is not only attainable, but practically attained. No matter where a book or a newspaper may be written or printed every one in the English-speaking world can read it. This is the uniformity which should be sedulously maintained, for confusion or multiplication of forms, either of meaning or spelling, would be disastrous to the language.

Uniformity of meaning can be trusted in the long run to take care of itself, either by the process of adopting new meanings or abandoning old. But spelling excites a constant desire among many persons to effect instantaneous reforms and improvements, for both reforms and improvements seem so delightfully obvious and so easy to accomplish. No one will deny that there are many English words in which the spelling might be advantageously simplified, and the natural movement of the language has been in this direction. But the attempt to effect such changes suddenly and arbitrarily seems to be as undesirable as it is difficult.

I read not long since Defoe's *Compleat Gentleman*, which has been printed for the first time from the original manuscript in the British Museum. Spelling reformers can find in its pages authority for many

simplified spellings which would no doubt delight their hearts. But we can also find on many pages the same word spelled in different ways, the multiplication of silent and double letters, and we perceive, in short, that confusion reigns supreme. This book was written only a few years before Johnson brought out his dictionary and thereby rendered the inestimable service of erecting a standard, thus producing a uniformity in spelling which never existed before. Since Johnson's time the whole movement of the language has been toward simplification, and silent letters have been not only silently but steadily disappearing. There are those who think that it is best to allow the language to work out its destiny in its own way and in accordance with its genius and spirit. It is possible that if Mr. Archer's plan of a meeting of representative scholars and writers from all parts of the English-speaking world, who should agree on certain changes in spelling, were carried out spelling might be simplified at one blow and at the same time uniformity be preserved. But it is absolutely certain that no self-constituted committee, no association here or there, no executive order, no body of men representing only themselves or groups of individuals in one or even two countries, can force a sudden reform in spelling. Such attempts only add confusion, and it is infinitely better to express an idea by a clumsy symbol which everybody uses than to try to inject a far more accurate



symbol which only a small minority will employ. As things are, it is much better to permit the language to work out its own modifications as it does its extensions in its own way. The cardinal object of all who love the English language should be to maintain its strength and purity, and the greatest enemies to strength and purity are the abuse which warps and distorts the meaning of words and the confusion which results from efforts to reform either meanings or spelling to suit the taste and fancy of individuals. Let us be content with our great possession, which has come down to us through the centuries, meeting victoriously every chance and adventure and never failing those who have called upon it, whether for the simple needs of daily life or to express in the noblest verse the thoughts and visions of the greatest poets.

## DIVERSIONS OF A CONVALESCENT

To one who, since boyhood and scarlet fever, had never known what it was to be kept for a day in bed by illness, the swift change from health and activity to the condition of a surgical case, helpless, inert, imprisoned, was startling in the extreme. A wild dream it seemed to be at the first return to consciousness. The reawakening came as if it were a rebirth which, like its original, was only "a sleep and a forgetting." Then one became suddenly aware that the world had shrunk into a small room and that this new little world was filled with one's own petty personality and with naught else. All the interests of yesterday, all the thoughts of the waking hours, of public affairs, of private joys and personal cares — all alike seemed to have vanished. But their departure caused no sorrow. The vacant spaces, the empty air which they left behind, brought only a drowsy sense of rest and quiet. There was no longing to fill the void so suddenly created. Even the mere thought of attempting it was so wearying, so painful indeed, that it faded away with the visions of what once had been, leaving nothing but a sensation of peace and soft content.

For the first days, lying chained to one position, it

was enough to gaze through the window: to see the grassy slope climbing slowly among the gray ledges to the crest of the cliffs and then beyond that crest to behold the ocean floor and the far horizon-line. There was a peculiar joy in watching the darkness fade as the vault of heaven filled with gradual light while over all stole quietly the flush of dawn. Then the shadows appeared and shortened and disappeared; came again as the sun passed the zenith, and slowly lengthened until swallowed up in the gathering night. And against the darkening sky, where the gazer all motionless had seen the dawn, there now sprang out the flashing light from the high tower on the low ledge hard by which marked the entrance to the city's harbor; while still beyond, far down on the horizon's edge, glittered another great light which from its sunken reef pointed out for those who had gone down to the sea in ships the way to safety and repose.

A few days passed and then came another room, another window, and another view. Here the ocean seemed to lie at one's feet; no distant horizon line but the coast on the other side of the broad bay curving away in a line as beautiful as the Apulian shore when we look at it from Taormina. The infinite aspect of the sea which, seen from the first window, knew no barriers until it washed the shores of Portugal, was gone. In its stead, in the place of the brooding peace of the unbounded ocean came the life and motion of the

waters chafing against the land. The great torches which beckon to the huge ships suddenly coming up out of the ocean wastes no longer shot sharply through the darkness and their place was taken by a quiet little light, burning with red steadfastness only to guide a few stray fishermen or small trading schooners as they made their way north and south, clinging to the coast, which is normally their safety and at times, alas, their grave! The quiet red light had a calm, domestic air which seemed very soothing and comforting after the piercing flashes of the stern towers rising in lonely abruptness from the sea.

October of last year,<sup>1</sup> if not a "close bosom friend of the maturing sun," so far as any one could see, was certainly a "season of mists." For five days the New England coast was wrapped in a fog of unequalled duration and density. Yet to one with naught to do but watch, it was soon made manifest that these sea mists were not guilty of the blank absence of change so dreary to the impatient passengers on fog-bound ships. Without apparent reason the mists would retreat and the rocky coast emerge as if suddenly re-born into the world. Then the mist columns would come marching back with gathered reinforcements from the ocean, and all things on land and sea would vanish behind the soft gray veil. Sometimes they would creep in over the surface of the water and all on the

<sup>1</sup>1913.

sea-level would disappear, leaving the lighthouse up aloft, vivid and distinct, looking down upon the eddying wreaths below; and then again they would drift back high up and the light above would be lost while all the edges of the rocks would be clear upon the water-line. All these movements, sudden, surprisingly destitute of reason or apparent cause, were graceful and beautiful, concealing an invisible force which is so impressive to the finite sense, and all the more so here from the extreme gentleness with which it moved.

To fogs succeeded storms and with the storms came a heavy surf. The slow, gliding movements of the mist were gone and the whole scene was pervaded with a restless violence. By the hour together the onlooker could watch the waves climbing the reefs and cliffs along the outstretched line of rock-bound coast, only to fall back and come roaring in again, masses of white and angry foam, impelled by hidden forces, exuberant in all the infinite variety which can never grow stale to those who gaze with wonder. Across the clouds and rain swept the great gulls who come from Labrador to pass the winter in the milder climate of Massachusetts. To see them soaring up and down, floating easily upon the gale, careless of rain and wind alike, is a beautiful sight, a spectacle of grace and power which never wearies. As one watches the wonder grows, and ever more insistently the watcher asks how many eons of time nature consumed in the evolution of such per-

fect flying-machines. Nearer home were six crows who had been living on the point for some weeks. They moved about, consulted together, went from tree to ground and back again, and presented always that exhibition of busy idleness which has such an enduring charm to those whose lot it is to labor in this workaday world.

But it was at night that the second window had its most enthralling charm. In the darkness the broad waters of the bay stood out with a still deeper blackness, cold, unrelenting, unwavering. It seemed so unfeeling, so final, that one shrank from it as if it symbolized the last great blank when all material things have perished. Then one raised his eyes and far across the bay, white and luminous above the blackness of the sea, shone out the electric lights along the shore. They seemed very human, very kind and friendly, those lights across the bay, and on the rare nights when the sky was clear it needed but another lift of the eyes and one saw the stars in all their steady splendor, while toward morning, the waning moon would cast its pale light through the air and the darkness of the waters would soften and take on the purple tone of Homer's wine-dark sea. Yet the pleasantest memory of that scene of night is, after all, those lights across the bay, which seemed to bring hope and rest and peace when the dark water had been passed and the tired sight lost all weariness as it met the glow of

the human lamps and, far above, the unchanging glitter of the stars.

All these sights thus seen from two windows had been part of his existence from the day when the convalescent first opened his eyes upon the world about him. The sky and sea in all their moods had been the friends of a lifetime. Every ledge, every reef, every pool teeming with life, every bend and curve in the coast-line were known to him with a more minute knowledge than anything else on earth. Yet now, as the mind began at intervals to pass outside the mere physical conditions of the body, it would rest with a sensation of deep repose upon these familiar sights and find in them beauties and reflections, not without depth of meaning, never noted in all the years which had gone before. They all seemed full of voices and the voices were saying: "Look at us; you thought you knew us well, but we are filled with undiscovered beauties and we have many secrets yet untold." At the same time the mind, as it reawakened, recoiled as at the outset from all which had occupied it in the daily round of life now so remote. The thoughts would not take their wonted course. The effort to make them do so was not only forbidden but was too laborious to be attempted. So the thoughts thus set free turned first without strain, entirely of themselves, quite restfully to the familiar sights of ocean and land and sky which came unaided to the field of vision. It seemed like a

voyage of discovery with ever new delights, as the eye unmoving read the twice-told tale. It was beyond measure interesting to cease from all effort to apply one's mind and to allow the vagrant thoughts to stray whithersoever they would in glorious irresponsibility.

Very soon indeed they began to extend their journeys and to travel from the visible world into the world of books, not that book world which is filled with "unconcerning facts" and crowded with the gathered knowledge of the centuries, but that far fairer world which is the creation of imagination. The convalescent restored to health and strength remembers well the first thought, which was not a part of what he saw, and which floated into his head on one of the first mornings as he watched the dawn. It brought with it the memory of certain lines in Matthew Arnold's well-known poem *The Wish*:

"Bathed in the sacred dews of morn  
The wide aërial landscape spread —  
The world which was ere I was born,  
The world which lasts when I am dead;

"Which never was the friend of *one*,  
Nor promised love it could not give,  
But lit for all its generous sun,  
And lived itself, and made us live."

The lines are as familiar as they are beautiful. They come from a melancholy poem, but at that moment there seemed in them no shade of sadness, only sympathetic feeling, a consoling and tender loveliness.



It so happened that during the summer just past the convalescent had read the *Odyssey*. Now his mind went back to it and all the stories came drifting by, each one bringing a picture which seemed to frame itself in the window and find its scene upon the cliffs with their ocean background. Chief among them, most constantly visitant, was the return of *Odysseus* in disguise and the slaying of the suitors in the hall, perhaps the greatest story, merely as a story, ever written. In some unexplained way the incident of "Argos" seemed to stand out especially among all the others and the convalescent found himself with his well-nigh all-forgotten Greek trying feebly and yet without a sense of effort to put the lines together. They are few indeed: no great feat to say them over if one can but recall them, which the searcher could not do except in fragments.

<sup>1</sup> *Ἐνθα κύων κείτ' Ἄργος ἐνίπλειος κυνοραιστέων.  
 Δὴ τότε γ', ὡς ἐνόησεν Ὀδυσσεΐα ἐγγυὸς ἐόντα,  
 Οὐρῆ μὲν ῥ' ὃ γ' ἔσηνε καὶ οὐατα κάββαλεν ἄμφω,  
 Ἄσσον δ' οὐκέτ' ἔπειτα δυνήσατο οἶο ἄνακτος  
 Ἐλθέμεν.*

and then:

<sup>2</sup> *Ἄργον δ' αὖ κατὰ μῶιρ' ἔλαβεν μέλανος θανάτιο.*

<sup>1</sup> There lay the Dog Argos, full of vermin. Yet even now when he was aware of Ulysses standing by, he wagged his tail and dropped both his ears, but nearer to his master he had not now strength to draw.

<sup>2</sup> But upon Argos came the fate of black death.

That is all. The recognition of the master when all others fail and then the death of the old dog. There is deep pathos in it, in the contrast between the loving instinct of the animal and the human forgetfulness of the absent. "I am as true as truth's simplicity and simpler than the infancy of truth." We must turn to another great genius to find the phrase which exactly describes the imagination from which came forth the tales of the Odyssey.

It so happened that a few weeks later the reviving convalescent read a book which contained a burlesque of Homer. The last sentence of this bit of humor may also have been intended to be comic or perhaps was written in the profoundest irony, but it seemed as if it was seriously meant. The author wished universities to understand what the classics really were: "only primitive literature; in the same class as primitive machinery and primitive music and primitive medicine." The convalescent wondered as he read this observation what the author meant by "primitive," for Homer's men were much farther removed from primitive man in the scientific sense than we are from the men of the Iliad. The statement, however, although occurring at the end of a burlesque of Homer, referred to the classics generally. So the convalescent diverted himself by wondering whether the writer regarded the authors of *The Republic*, *The Politics*, and the *De Natura Rerum* as "primitive men." The dis-

inction between intellectual power and mere knowledge of accumulated facts seemed in some way to have been lost sight of and the convalescent tried to think of the men of our own radiant civilization who in mere naked power of thought and intellect surpassed Plato and Aristotle and Lucretius. Their names did not at the moment occur to him, probably on account of his weakened condition. Most of all, the convalescent marvelled at the queer theory that "primitive" men should not be able to produce works of the imagination because they were destitute of modern machinery. He had always thought that among so-called primitive people, in the dawn of civilization, the imagination was unusually strong, just as it is in a child compared with the grown man. This he had believed to be a truism and indeed he well knew that it was one of the "commonplaces, glorified" by Macaulay, to borrow Carlyle's phrase. Did not a genius greater even than Homer, he said to himself, touch the last scene of a royal tragedy with the bitter memory of a loved and faithless horse? Who can forget the effect produced by the thought of Roan Barbary upon the fallen and imprisoned king with sudden death lurking behind the arras? The conversation with the groom is simple, commonplace almost, in expression, and yet it conveys a sense of pathos and misery so poignant that it pierces the heart. Then, as the convalescent reflected still further upon the dog Argos, there came to him the

memory of a great actor moving crowded audiences to smiles and tears by saying in a quiet voice: "If my dog Schneider were here he would know me," just as the rhapsodists moved the Greeks by repeating in noble verse the twice-told tale of Odysseus and his old hound. It seemed as if we, too, must be "primitive," or else that the poet who sang of Achilles's wrath touched a chord which always vibrates and had in all he wrote the quality of the eternal so long as human nature exists. Perhaps, after all, he was neither "primitive" nor modern, but simply a great genius.

From Homer the convalescent's mind wandered happily and of its own accord to the poetry of his own language. He found himself trying to repeat verses which without any will of his own came fluttering into his mind. He was struck by the fact that those which came first were not from the poets of the nineteenth century, among whom are numbered some of the best-loved and most familiar, but were from the Elizabethans, from the seventeenth-century poets, from the song-writers of the great period of English song, from the

"bards sublime,  
Whose distant footsteps echo  
Through the corridors of Time."

One of the very first, why he could not tell, was Ben Jonson's very familiar stanza:

“It is not growing like a tree  
In bulk, doth make man better be;  
Or standing long an oak, three hundred year,  
To fall a log at last, dry, bald, and sere:  
A lily of a day  
Is fairer far in May,  
Although it fall and die that night —  
It was the plant and flower of Light.  
In small proportions we just beauties see;  
And in short measures life may perfect be.”

It is but one stanza in a poem of many stanzas not otherwise memorable. But as the convalescent repeated to himself the well-known lines, known by heart for so many years, suddenly he seemed to see as he had seen in the familiar landscape spread before his eyes a new beauty and deeper meaning which he had never noticed before. In the lines he discovered, as he thought, a brief epitome of the Elizabethan genius. In the first and last verses were the aphorisms full of wisdom and reflection, condensed, concise, in which the Elizabethans so delighted, and then in the middle flashed out the tender and exquisite image of the lily, all compact of imaginative beauty. With unerring voice the poet touches that high note which they all in that day seemed able to do whenever they really tried, even in the midst of their extravagances and conceits and all the other faults and failings which were the ephemeral children of the fashion of the day. Scores of critics and lovers of poetry probably had observed

all this before in these same verses, but it came to the convalescent as a discovery and he felt as much happiness as the "watcher of the skies"

"When a new planet swims into his ken."

This stanza of Ben Jonson happened to stray into his mind first, why he could not guess, but his thoughts ranging at will through the wide spaces of memory turned naturally and chiefly to Milton and Shakespeare, above all to the latter. Passages from *Paradise Lost*, from *Lycidas*, *L'Allegro*, *Il Penseroso*, the *Samson Agonistes*, and the *Comus*, and lines from the sonnets, came unbidden in the silences of such a time. They were only fragments, but there was an endless pleasure in trying to recite them, to see how far the convalescent could go, and there was something infinitely soothing and satisfying in their noble beauty and in the mere perfection of the words and rhythm, for Milton is the greatest master of metrics in English and makes an appeal, possible only to the

"Chief of organic numbers!  
Old scholar of the spheres!  
Thy music never slumbers,  
But rolls about our ears  
Forever and forever!"

Yet it was to Shakespeare, best known and best beloved, that the convalescent's mind turned most

constantly. His words recurred unceasingly as the thoughts, effortless and unfettered, flitted here and there. Passages from the plays, entire sonnets, repeated themselves to the convalescent, some over and over again, always with a sense of peace and deep content. Familiar again as the sight of sea and rock and sky outside the window, they seemed now to be filled with beauties never seen and a music never heard before. Kind hands had placed beside the bed the Golden Treasury and the Oxford Book of English Verse, and one day not long after the swift reduction to immobility had befallen the convalescent he stretched out his hand, took up the Golden Treasury, opened it at random, and read one Shakespeare sonnet. The physical act of reading those fourteen lines seemed a most remarkable and fatiguing feat at the moment, but once accomplished it filled some hours with pleasure as the convalescent gazed through yet another window at a sunset fire kindling the clouds, and quietly reflected on what he had just read. The ability to read, after this first memorable experiment, came back more rapidly than any other, and in a little while it was possible to read many lines instead of only fourteen.

In the Oxford Book of Verse Shakespeare's songs are printed together. The convalescent knew them all very intimately, but it so happened that he had never read them one after another in unbroken succession, and the effect of doing so was a fresh impres-

sion of the limitless quality of Shakespeare's genius. To write a song of the most perfect beauty when he happened to think that it would be well at that point to give "Jack" Wilson a chance to sing something seems to have been as easy to him as it is to the "lark to trill all day." So easy to him and yet how rare and marvellous the art! Swinburne says in his drastic way that English song-writing in the fine and true sense ended with Herrick. It sounds like an extreme statement and yet it is difficult to controvert it. Poems, lyrics of highest beauty and splendor, touching every note in the gamut of emotions, we have had since then and in a rich abundance. But the lyrics or the poems of the first rank, which are also songs which sing themselves and lose no jot of their perfection, are sufficiently uncommon since the early seventeenth century, when it seemed as if every poet and dramatist had the power, either at some great moment, or like the master of them all at any moment, to sing when the fancy caught him. As the convalescent read and read again the Shakespearian songs one after another he found himself wondering how any being of ordinary intelligence could think that the same hand wrote,

"The World's a bubble, and the life of Man  
Less than a span";

and then,

"Hark! hark! the lark at heaven's gate sings."



Or if there be a faint doubt about The World, described as "Lord Verulam's elegant *παρωδία* of a Greek epigram," is it conceivable that the man who wrote

"That time of year thou mayst in me behold  
 When yellow leaves, or none, or few, do hang  
 Upon those boughs which shake against the cold,  
 Bare ruined choirs, where late the sweet birds sang";

who gave us one of Matthew Arnold's great touchstones of poetry,

"Absent thee from felicity awhile,"

could also have been guilty of such lines as:

"O sing a new song to our God above;  
 Avoid profane ones, 'tis for holy quire";

which are far below Addison's

"Spacious firmament on high,"

and by no means up to the level of Doctor Watts?

Internal evidence is notoriously untrustworthy; yet it is beyond belief that the same man could have written all these three poems or sets of verses. One can only repeat in despair the saying of Henry Labouchere: "I am perfectly willing to admit that Bacon wrote Shakespeare's plays if they will only tell me who wrote the works of Bacon."

But as the reader closed the book he reflected that

after all it was less surprising that Shakespeare should have written all these songs, scattered with prodigal hand here and there throughout the plays, than the fact that all the dramatists of that day could each and all apparently write a quite perfect song of great lyrical beauty at least once if they set themselves to do it. The convalescent ran over to himself the few he could easily call to mind. There was Webster, of whom nothing is known, but who wrote two powerful tragedies which are still read and in which are touches worthy of the master. His dark and sinister genius, as we see it displayed in *The Duchess of Malfi* and *Vittoria Corombona*, seems as unfitted as possible for lyric poetry, and yet when the mood was on him he wrote the famous song, sad as one might expect from him, but full of tender feeling, which is called a "land dirge" and which begins:

"Call for the robin-redbreast and the wren."

Then the convalescent thought of Heywood, a second-rate man, his plays read only by students of the Elizabethan literature, and yet Heywood could write:

"Pack, clouds, away, and welcome day,  
With night we banish sorrow";

a song worthy of a place in the Shakespearian group. The next that came to mind was Shirley, latest of the Elizabethan and Jacobean dramatists. His plays are

not now read at all; it may be doubted if even the name of any one of them is remembered except by students of literature. Yet every one knows the lines, which are a familiar quotation,

“Only the actions of the just  
Smell sweet, and blossom in their dust”;

and these are by no means the best lines in a noble poem. In the quiet room the convalescent recalled gradually the whole of the lyric. Take as an example of its quality the opening lines of the last stanza:

“The garlands wither on your brow;  
Then boast no more your mighty deeds;  
Upon Death’s purple altar now  
See where the victor-victim bleeds”:

There is the splendor of the great epoch in these lines and here we find it in this weak and forgotten playwright, the last of the great succession. Then, well beyond the end of the mighty line, memory declared that we could find an example of the great tradition still lingering in a man whose name is well known on account of a dim connection with Shakespeare, whose plays are all unread, who flourished in the years of decadence, Sir William Davenant, and yet even then he could write a song worthy of the “spacious days”:



From the early poets one went easily on, when once started, to the much-loved poets of later days, beginning with the immortal group at the opening of the nineteenth century. The songs of Shakespeare led naturally to the plays, not at first to the great tragedies but to the comedies, where one is borne away into another world which never existed anywhere, and yet exists always and everywhere, a world filled with romance, with light and life and humor, broken here and there by the deep notes of tragedy, full of beautiful poetry and peopled with characters which can never grow old because they are as eternal as humanity with no touch of the fleeting fashion of a day about them. The convalescent had loved them long and truly, but it seemed to him that he had never known them so well before, never realized so fully what delightful companions they were, so much more real than any historical figures of men and women who had actually lived and wrought out their lives upon the earth to which long since they had returned.

The physical ability to read indefinitely, by the hour together, came back rapidly, and with it the power of reading new books appeared. They could not take the place of those which had come first, of the poetry and imaginings among which memory and thought had so happily roamed and wandered. But these new books began to share the hours with the old. There was no poetry among them. The convalescent had expected

no novels, for, although the new novels are countless, they suggest generally only Rogers's rule, "When I hear of a new book I take down an old one." Of course the endless swarms which, like flights of brown-tailed moths upon a wall, flutter down in their myriads upon the book-stalls clad in gay paper covers, the chief incitement to their sale, were out of the question. Even in robust strength the mind turns from them as it does instinctively from those of the "hundred thousand copies sold" which are usually as quickly and irretrievably forgotten within the next year as Pomfret's Choice, which sold its innumerable editions in the eighteenth century. Still more emphatically did the mind, sensitive and longing for a happy content, turn from the morbid, the sordid, and above all from the solemnly moral novels with a purpose to which just now a passing notoriety is so readily accorded. Nevertheless, from this unpromising field, unpromising perhaps owing to the reader's distaste for it, there came quite unexpectedly some stories by one author which not only amused but which brought with them the sense of new characters, created characters, with whom it was a pleasure to live for the brief hour while one read their adventures.

When Biron in the midst of the pleasant fooling and jesting of Love's Labour's Lost says,

"To move wild laughter in the throat of death?  
It cannot be; it is impossible:  
Mirth cannot move a soul in agony,"

we suddenly hear the deep tragic note which was one day to become familiar to the world in Lear and Othello. But the task imposed by Rosalind does not go quite so far as Biron's interpretation would make it. She tells him that it must be his part

“To enforce the painèd impotent to smile.”

It is a difficult feat but it is not impossible, and the words of this the earliest, probably, of Shakespeare's charming women came freshly to his mind when the convalescent found himself laughing out loud as he read, quite alone, “George Birmingham's” story of Spanish Gold. Merely as a story it has the romantic charm. The search for buried treasure always has an unfailing fascination and the scene of the book is laid most fittingly in a remote, unfrequented island among a people isolated from the world, not yet drilled into uniformity by civilization, and at once picturesque, humorous, and pathetic. Upon this stage the characters appear: all are real people; all in their degree entertaining and interesting. But there is one, who stands out as the hero, who is a genuine creation, so natural, so delightful, that we welcome him to that goodly company of friends whom we owe to human imagination, from whom we cannot be parted, and who are more really living than those who have actually walked the patient earth. John Joseph Meldon is a being very much alive. To one very grateful

reader under adverse circumstances he came as a joy, bringing laughter with him and leaving a strong feeling of personal affection behind him. He is again the hero in *The Major's Niece*, where he has all the fascination which he possesses in *Spanish Gold*, although the former story has not the romantic attraction of the adventures in search of treasure to be found in the tale born of the Armada tradition. Doctor O'Grady in *General John Regan* and Doctor Whitty in the book that bears his name are variants of the Meldon type, but neither is quite equal to the original, although both are delightful persons. In the *Red Hand of Ulster*, beneath the easy humor and the kindly satire, runs a deeper purpose. In the picture of the resolved Ulstermen with their great fighting traditions, of their inability to resist the forces of the empire if really employed against them, and of the vacillations of the ministry and their unwillingness so to employ their equally reluctant army and navy, the truth of the Ulster situation seems to be very sharply depicted. But the predominant feeling in the mind of one solitary reader was that of gratitude to Canon Hannay for bestowing upon him the acquaintance, the friendship, and the conversation of J. J. Meldon.

In one respect it is sad to confess this attractive person proved a traitor, for the tales of his exploits opened the door to other new books which were welcomed by the regained power to read without limit,



and the stories of real men who had lived and toiled and vanished came in to share the hours which the poets and the dramatists had for many days monopolized. Instead of playing unfettered in the fields of memory and imagination, the thoughts came back to the world of facts and knowledge. The dream light in which the convalescent had been living so contentedly gave way to the daylight. The cares which infest the day and the habitual interests and pursuits began to show themselves and with insistent voices demanded a surcease of the neglect from which they had suffered and a renewal of the attention which they were wont to command. They would not be denied, these old occupations and duties, and, although there were still many tracts of time which went to books, new and old, to meditation on things which were of no practical use, and therefore peculiarly delightful, they asserted their mastery more and more until at last it was complete. After this there were no more roamings without plan or purpose in pleasant realms of memory and fancy, and the diversions of the convalescent which had made him happy during so many motionless hours came to an end.













